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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 10/08/2018****Judgment delivered on: 05/09/2018****CRA No. 421 of 2011**

- Ravi Kumar Rai S/o Chitranjan Rai, aged about 46 years, Occupation- Assistant Grade-III, Mining Office, Collector Office, Dhamtari, District- Dhamtari, Present R/o Near Shahid Bhagat Singh School, Pandri Bajar, Raipur, Distt.-Raipur, C.G.

---- Applicant**Versus**

- State Of Chhattisgarh through-Anti Corruption Bureau, Raipur, District- Raipur, Chhattisgarh.

---- Respondent

For the Appellant : Mr. Saurabh Dangi, Advocate.

For the State/Respondent : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****05/09/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 27.5.2011 passed by the Special Judge (Prevention of Corruption Act), Dhamtari in Special Criminal Case No.1/07 convicting the accused/appellant under Section 13 (1) (d) read with Section 13 (2) and Section 7 of the Prevention of

Corruption Act, 1988 (for short 'the Act of 188') and sentencing him to undergo RI for 4 years with fine of Rs.1,000/- and RI for 2 years with fine of Rs.1000/-, with usual default clauses, respectively. Both the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is this that son of complainant Tularam Gond had been granted lease for mining stones by Gram Panchayat Barari, regarding which he had filed an application for grant of mining license in the office of Mining Department, Dhamtari, where applicant was posted as Assistant Grade-III. It is alleged that appellant was stalling the approval of license and was demanding bribe of Rs.3,000/- The complaint being disinclined to pay the bribe amount as demanded by the appellant, filed an application before the Superintendent of Police, Special Police Establishment, Lokayukt at Raipur on 30.5.2002, subsequent to which a trap was organized. In presence of complainant and the witnesses a demonstration of trap was given along with the instructions regarding the trap proceedings. The trap party reached the office of the appellant where the complainant handed over the bribe amount Rs.2,000/- to the appellant and on receipt of signal by the complainant, the trap party rushed to the spot, disclosed their identity. The hands, pant of appellant and currency notes were recovered washed in the solution of sodium carbonate, the colour of solution turned pink because of the presence of phenolphthalein powder on it. Solution was preserved and sealed. Subsequent to that the documents relating to the application submitted by the son of complainant were seized from

the office of the appellant. Seized solutions were sent for examination to the FSL from where report Ex.P-22 was received in which test for presence of phenolphthalein was found positive.

3. After completion of Investigation, the charge-sheet under Section 7 & 13 (1) (d) r/w 13 (2) of the Act of 1988 was filed against the appellant before the concerned Court and accordingly the charges were framed against the appellant. The appellant abjured his guilt and sought trial. In order to prove its case the prosecution has examined 16 witnesses in all. Examination of appellant under Section 313 of CrPC has been recorded, in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. However, he has admitted that he received the money from the complainant but that was towards the payment of royalty due on the complainant and not as bribe. Factum of royalty due has also been admitted by the complainant. He further submits that on making application for grant of license for mining stones, the complainant was ordered to deposit royalty of Rs.2250/-, and the appellant had simply asked him to deposit the aforesaid amount but the complainant misinterpreted the same and thought that the appellant is demanding bribe from him. He further submits that even at the time of handing over the alleged bribe amount, the complainant had requested the appellant to accept the money towards royalty. He examined two witnesses in his defence.
4. After hearing the parties, the trial Court by the impugned judgment convicted and sentenced the appellant in the manner as mentioned

in Para-1 of this judgment.

5. It is submitted by the learned counsel for the appellant that the impugned judgment of conviction of the appellant passed by the trial Court is totally erroneous and not based on any cogent and clinching evidence and thus the prosecution failed to prove its case beyond reasonable doubt. He further submits that the prosecution had failed to prove the demand and acceptance of alleged illegal gratification because the prosecution has not examined any independent witness in this regard. Appellant in his statement recorded under Section 313 CrPC has categorically stated that he received the money from the complainant towards royalty as a sum of Rs.2,250/- was due and payable by the complainant. Even one receipt (Ex.D-1) in this regard was also issued to the complainant by M.D. Manikpuri (DW-2). Thus, from the evidence adduced on behalf of the prosecution itself it is apparent that the said amount has been received by the appellant from the complainant as an amount payable towards the royalty and not as a bribe.
6. It is further submitted that, not a single witness had accompanied the complainant as shadow witness. All the prosecution witnesses had arrived on the spot after the alleged bribe money was handed over to the appellant. In Para-13 of cross-examination trap witness R.K. Pandey (PW-5) has stated that he has no knowledge as to what was stated by the complainant to the appellant while handing over him Rs.2,000/- as he was not present there at that time and as such, he is not a witness to taking and handing over the money to the

appellant. Further, this witness has stated that at that time the complainant has admitted that he had to deposit Rs.2250/- as royalty, hence, he is unable to say that the amount handed over to the appellant was towards the payment of royalty or not. A suggestion in this regard was put to Vishwas Chandrakar (PW-7) in his cross-examination which he has denied.

7. The complainant has also admitted that he was required to deposit Rs.2250/- as royalty and only after payment of such amount, the license to carry out mining activities would be issued in his favour. He has further stated that as he does not have the money, therefore, he has not deposited the royalty amount. He denied that he has handed over money to the appellant and a receipt of the same was issued to him. Another witness of spot namely S.R. Bhagat (PW-12) has stated in his cross-examination that he has no knowledge about the conversation which took place in between the complainant and the appellant at the time of handing over and taking the money. Even the investigating officer Navin Shankar Choubey(PW-15) has also admitted in the cross-examination that none of the members of the trap party heard or overheard the conversation between the complainant and the appellant regarding giving and accepting of Rs.2000/-.

8. It is submitted that L.K. Yadav (DW-1), Mining Inspector in the same Department, has stated before the Court that till 31.5.2002 the complainant had not paid the royalty for issuance of license in his favour. This witness has produced the receipt book of the department

in which on 31.5.2002 though a receipt of payment of Rs.2000/- has been prepared but the same has not been issued. This receipt was prepared on the instructions of Incharge Mining Officer. Another defence witness M.D. Manikpuri(DW-2) has clearly stated that the complainant had paid the money towards royalty and it is he who prepared the deposit receipt (Ex.D-1) on the instructions given by the in-charge Mining Officer. Hence, it is prayed that there are ample circumstances available for disbelieving the statement of prosecution witnesses and hence the appellant is liable to be acquitted of all the charges.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of ***Bal Krishna Sayal Vs. State of Punjab*** reported in ***(1987) 2 SCC 647***; ***Krishna Chander Vs. State of Delhi*** reported in ***(2016) 3 SCC 108*** and ***P. Parasurami Reddy Vs. State of Andhra Pradesh*** reported in ***(2011) 12 SCC 294***.

9. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecution witnesses have clearly stated in their statement before the court that the amount offered by the complainant to the appellant was in the form of bribe. There had been no royalty due to the complainant as the complainant himself has stated that he had already paid the royalty through the challan and document showing the said fact i.e. bank challan, is filed as Ex.P-15. L.K. Yadav (DW-1) has admitted in his cross-examination that he has no knowledge about the demand of bribe made by the

appellant from the complainant. In the cross-examination this witness has admitted that M.D. Manikpuri (DW-2) has no authority to write the royalty payment receipt unless and until directed by the higher officers and the royalty is deposited in the bank through challan. He has further admitted that there was no order of the Mining Officer to issue such receipt in favour of the complainant. Under these circumstances, it cannot be said that the appellant has been able to make out a case of his acquittal as the prosecution has proved its case beyond doubt.

10. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.

11. Tularam (PW-10) is the complainant. He has stated that he has submitted an application along with relevant documents for grant of mining license. After depositing the application, when he contacted the appellant for processing his application for issuance of license for mining stones, the appellant demanded Rs.4000/- as bribe from him. Firstly, he paid Rs.2000/- to the appellant and subsequent to which he received authorization papers and he started mining work. Thereafter, the appellant had again demanded Rs.2000/- from him. Hence, he filed the complaint (Ex.P-5) in the office of CBI, Raipur. He has further stated about the demonstration of trap proceedings and thereafter he along with the trap party reached the office of the appellant. Thereafter he went to the appellant and asked him to prepare the papers whereupon the appellant asked him as to whether he has brought money or not. On this, he handed over the

tainted currency notes of Rs.2000/- to the appellant which was accepted by him and kept in the pocket of his full pant. He has further stated that on a predecided signal given by him, the trap party reached the spot, caught hold of the appellant and recovered the bribed money from the pocket of the appellant. Thereafter the trap party completed the trap proceedings. He has further stated that he has already deposited the royalty due and payable by him through bank challan vide Ex.P-15. In the cross-examination, this witness has denied that a receipt was prepared against the deposit of Rs.2000/-. In para-13 of the cross-examination when this witness was confronted with 'A to A' part of his statement (Ex.D-1), he denied making of such statement. Though this witness has stated certain other things in his statement recorded under Section 161 CrPC, but the same do not find place in his statement recorded in the Court.

12. Tularam (PW-10) is the only witness of the conversation that took place between the complainant and the appellant at the time of handing over the money. Other witness of trap party R.K. Pandey(PW-5) has stated in his Court statement that he arrived on the spot only after the signal was given by the complainant indicating that the bribe money has been given to the appellant. There are other witnesses who were present with the trap party i.e. Pawan Kumar Pathak PW-4, G.R. Banjare PW-6 & Vishwas Chandrakar PW-7, and according to them also, they arrived at the spot immediately after the signal given by the complainant. Hence they are also not the witnesses of conversation that took place between

the complainant and the appellant. No statement was given by the appellant before these witnesses that the money that was handed over to him by the complainant was for the purpose of payment of royalty.

13. Main issue that has been raised in this appeal is that the amount received by the appellant was towards the payment of royalty and regarding which the evidence on record is scrutinized to ascertain whether the defence has been able to prove the said fact or not.

14. Tularam (PW-10) has stated before the court that he has already the royalty of Rs.2250/- vide bank challan Ex.P-15. Perusal of document Ex.P-15 would go to show that it is a "saving-bank pay in slip" by which an amount of Rs.2250/- was to be deposited in the saving bank account of Jila Panchayat concerned. The pay-in-slip form and counterfoil both have been seized and produced before the Court and a glance of the same would reveal that this pay in slip form was not presented in the bank for making payment as the seal of the bank is missing on the form and the counterfoil. Thus, it appears that the statement made by Tularam (PW-10) that he has already deposited the royalty amount through bank challan does not appear to be true.

15. Secondly, the denial made by Tularam (PW-10) regarding contents of statement recorded under Section 161 CrPC, exhibited as Ex.D-1, and the statement as present in 'C' file of the record of the trial court goes to show that after handing over the bribe money, the complainant was given the form of pay in slip for depositing

Rs.2,250/- as royalty. It is also stated by him in his previous statement that his signature was also obtained in the challan form for issuance of pit pass book and Form B was handed over to him to make payment accordingly. Tularam (PW-10) has categorically denied in his cross-examination that he has not made any statement under Section 161 CrPC, whereas the investigating officer has made a clear statement that he has recorded statement of complainant under Section 161 CrPC in the course of investigation. This version of the investigating officer has not been challenged in his cross-examination. Statement under Section 161 of CrPC of complainant is available on record in file 'C' gets support from the statement given by Navin Shankar Choubey (PW-15). Hence, under these circumstances, the denial of Tularam (PW-10) appears to be having no effect and there is no reason to hold that his statement under Section 161 CrPC was not recorded during the course of investigation.

16. Though the statement made by Tularam (PW-10) regarding payment of royalty through bank challan has been found to be false, but the fact remains that at the relevant time an amount of Rs.2,000/- was given to the appellant by the complainant. Therefore, the circumstances in which the amount has been recovered and seized are very important in this case. Navin Shankar Choubey (PW-15) has stated that on receipt of predecided signal by the complainant, the trap party went inside the office of the appellant and caught hold of the appellant. He has further stated that when the fingers of

appellant were dipped in the solution of sodium carbonate, the colour of solution turned pink. The solution was preserved and sealed. Secondly, on being asked by the trap party as to where he has kept the money given to him by the complainant, the appellant informed that he has kept the same in the right pocket of his full pant. One of the trap witnesses searched the right pocket of the full pant of appellant, took out Rs.2,000/-, which were in the denomination of Rs.100 each and on washing these currency notes in the solution of sodium carbonate, the colour turned pink. This solution was also preserved and sealed. The appellant was asked to take out his full pant and thereafter right pocket of his pant was washed in the solution and again the colour turned into pink. The solution was preserved and sealed. In the cross-examination, no question has been put to this witness to challenge his statement made in the examination-in-chief about the method in which alleged bribe money was recovered from the pant of the appellant, which shows that bribe money travelled from the hands of complainant to the hands of appellant and then to the pocket of the appellant.

17. Before arriving at any conclusion it would be relevant to refer to the statement of defence witnesses also. DW-1 L.K. Yadav has produced the receipt of office dated 31.5.2002 (Ex.D1-) showing receipt of Rs.2,000/- from the complainant. It appears that this receipt has been only written but not issued to the complainant. In the cross-examination this witness has admitted that the concerned Clerk is not authorized to receive advance royalty amount and issue

the receipt of the same, unless & until order in this regard has been obtained from the higher official. In this case, no such order was obtained from the higher officer. He has further admitted that amount of royalty is deposited in the bank through challan. He has further stated that if any bribe had been demanded by appellant then he is not aware about the same.

18. M.D. Manikpuri (DW-2) has deposed that on the date of incident the complainant came to the applicant and when the appellant asked the complainant to deposit the royalty amount of Rs.2250/-, he replied that he is having only Rs.2000/- and not Rs.2250/- and he requested him to accept the same. He has further deposed that thereafter he was asked by Shri Ghanshyam Singh Dhruw, the then Mining Officer, to accept the said amount and make an entry in this regard in the money receipt and accordingly, this witness has written money receipt (Ex.D-1), which contains signature of the complainant also. Thereafter, the trap party came inside the office. In the cross-examination this witness has admitted that order to accept Rs.2000/- in place royalty of Rs.2250/- has not been obtained from the in-charge officer of the mining department. He has shown ignorance about the rules allowing deposit of royalty fee in part instead of full royalty amount. He has further admitted that no specific order in this case had been obtained from the in-charge officer to receive the royalty in installment. He has further stated that he cannot say that receipt has been issued afterwards in order to show that Rs.2000/- was the royalty amount and not the bribe amount.

19. In this case it cannot be said that non-presence of any independent or shadow witness at the time of handing and taking over of bribe money is fatal to the prosecution. Reliance placed by the counsel for the appellant on P. Parasurami Reddy's case (supra) is of no help to him because in that case the currency notes were recovered from the possession of co-accused coupled with the fact that no shadow witness had accompanied the complainant. Similarly, in Balkrishna's case (supra) the accused demanded a bribe of Rs.100/- from the complainant for obtaining an order of waiver of penal rent of the official residence occupied by him but the independent witnesses of that case did not speak as to what transpired in conversation between the bribe giver and the appellant.

20. Hence in this case the question which arises for consideration, in the light of evidence discussed herein above, is whether the appellant has received the money towards the payment of royalty or it is an attempt by the defence to save the appellant from clutches of law.

21. On close scrutiny of the evidence available in record it appears that the complainant had approached the appellant and handed over tainted currency notes which the appellant has received and pocketed in his full pant pocket. None of the prosecution witnesses has admitted that the amount given by the complainant was towards the payment of royalty. It is clearly established that the tainted amount was recovered from the pocket of the pant of the appellant. Had it been the royalty amount, it ought to have been kept in the

drawer of the office where the received amount are usually kept. Secondly, the amount should have been with the person who is authorized in the office to accept the same. According to evidence adduced by the defence itself, it appears that the authorized person to receive the royalty amount was M.D. Manikpuri (DW-2) and not the appellant. Although it has been stated by M.D. Manikpuri (DW-2) that the in-charge officer has authorized him to receive the money but no such authorization is there on the receipt (Ex.D-1). On the contrary this receipt has been cancelled under the signature of the in-charge officer. Hence this signature, which is purported for cancellation, cannot be regarded as signature authorizing to accept money. Further, this receipt book was not presented before the investigating officer at the time of trap proceedings. The Investigating Officer (PW-15) has stated in his examination-in-chief that after the trap proceedings, the entire documents showing action taken on the application of the complainant's son namely Kamal Narayan Dhruw (PW-9) submitted for grant of license were obtained from the in-charge Mining Officer and seized accordingly. The omission to present such receipt at that time by the in-charge officer is relevant and cannot be overlooked because it raises question of existence of such receipt like Ex.D-1 at the time of seizure of other documents connected with the case of the son of the complainant from the mining officer. Hence, on the basis of the above findings, it appears that the evidence regarding the circumstances at the time of trap procedure are strong in favour of the prosecution and defence has failed to establish its case.

22. The explanation that has been tried to put up in the defence is neither sufficient nor supported with clear and cogent evidence so as to believe the probabilities of such things as having stated in defence.

23. After considering the entire material available on record against the appellant, this Court is of the view that as the appellant has failed to establish his defence before the trial Court, therefore, it is difficult to hold that the trial Court has committed any illegality or infirmity in passing the impugned judgment warranting interference by this Court in exercise of its appellate jurisdiction.

24. In the result, the appeal being meritless is liable to be and is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha