AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 05.10.2018

Judgment Delivered on : 27/10/2018

CR.A. No. 1880 of 2017

Vijay Kumar Khare, S/o. K. B. Khare, Aged About 51 Years, (Now 59 Years), Assistant Engineer, Electricity Distribution Centre, Jamgaon (T), Durg District Durg Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station Anti Corruption Bureau, Raipur Chhattisgarh.

-----Respondent

For Appellant	: Mr. Rajeev Shrivastava, Advocate
For Respondent/State	: Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

27/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Special Judge (Prevention of Corruption Act), Durg (C.G.) in Special Sessions Trial No.09/2012 on 30.11.2017 convicting the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 sentencing him with rigorous imprisonment of 2 years and fine of Rs.5000 and under Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and sentencing him with rigorous imprisonment for 2 years along with fine of Rs.5,000/- with default stipulations.

2. The case of prosecution in brief is this that a complaint was filed by the complainant - Nand Kumar Sahu (P.W.-4) that he had applied for electric connection for his bore-well. It is alleged that the appellant, who was Junior Engineer of Electricity Department Center, Jamgaon (T), Durg had made a demand of Rs.10,000/- for providing that electric connection. On submission of complaint/application on 27.10.2009 to ACB, the complainant was provided with micro tape recorder, which he used and recorded the conversation of the appellant regarding demand of bribe money and produced the same before the ACB, Raipur. On 30.10.2009, Investigation Officer, Jerol Lakda (P.W.-8) constituted a team, where the conversation in micro tape recorder was heard and the complaint of the complainant was verified. Subsequent to that a demonstration of trap proceeding was given to the complainant and the witnesses, who had been summoned. The complainant produced the bribe amount of Rs.5,000/- in the shape of 10 currency notes of Rs.500/- each. Their numbers were noted down in the Panchnama. The bribe money was soiled with phenolphthalein powder and kept in right pocket of the full-pant of the complainant (P.W.-4) and the complainant was instructed as to in what manner, bribe money was to be given and subsequent to that he was to give pre-agreed signal to the trap party.

3. Trap party proceeded to the spot i.e. the residence of the appellant, where the complainant went inside the house of the

appellant from where he came out after sometime and gave pre-decided signal and also informed that he gave Rs.5,000/- bribe money to the appellant, out of which, the appellant returned one currency note of Rs.500/- back to him. The trap party entered inside the house of the appellant and after introduction, fingers of the hands of all the trap party, except the complainant and appellant were washed in solution of sodium carbonate, the colour of which remained unchanged. This solution was preserved and sealed. Fingers of both the hands of the appellant were washed in the fresh solution of sodium carbonate, the colour changed into pink, which was again preserved and sealed. On the spot In-charge, D.S.P., Anil Pathak enquired from the appellant about bribe money, to which he replied that he has kept it in his left pocket of the half pant. Panch witness R.K. Kasiv (P.W.-7) made search of the pockets of the appellant and found currency notes of Rs.500/- in total of Rs.4,500/- kept in left pocket of the half pant of the appellant.

4. The number of currency notes were matched with the previous numbers noted in panchnama, which were found same. One currency note of Rs.500/- which was returned back by the appellant was also recovered. All the tainted currency notes were dipped in fresh solution of sodium carbonate and the colour of solution turned into pink. These solutions were preserved and sealed. The left pocket of half pant of the appellant was dipped in fresh solution of the sodium carbonate and the colour changed

into pink, which was preserved and sealed. The currency note of Rs.500/- recovered from the complainant was dipped in solution of sodium carbonate and the colour turned in to pink, which was preserved and sealed. The currency notes recovered in the half pant of the appellant were seized accordingly. Subsequent to that documents regarding application for electric connection made by the applicant were seized. During the procedure, the micro tape recorder was presented and the transcript was prepared on the spot. Subsequent to which, the other proceedings of investigation were also completed and pursuant to sanction of prosecution granted by the respective department, charge-sheet was filed before the concerned Court.

5. Appellant was charged with offence under Section 7 and 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. One witness was examined in defence. On completion of trial, impugned judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned hereinabove.

6. It is submitted by the learned counsel appearing on behalf of the appellant that the conviction recorded against the appellant is

erroneous without there being any basis of evidence of prosecution beyond reasonable doubt. The complainant – Nand Kumar Sahu (P.W.-4) himself has not supported the prosecution case and declared hostile, as he has denied to identify the appellant throughout and has not made any admission on the suggestion given by the prosecution. Further the appellant was not posted in Jamgaon (T) on the date of incident according to the statement given by A.K. Lakhera (P.W.-5), hence, the appellant was not a person in authority at the time when he was approached by the complainant making prayer for installation of electric connection in his bore-well, because of which, it can not be said that appellant had taken any illegal gratification and secondly for the reason that the complainant has not identified him as the person, who has taken illegal gratification, it is a case full of doubt, which should not have been ignored by the trial Court. On the second count, it is argued that sanction for prosecution (Ex.P-2) is not a proper sanction in accordance with the provisions of Section 19 of the Prevention of Corruption Act, because as per Section 19 Sub-section (1) (c), it was essential that the appellant, who was an employee of CSPDCL, the sanctioning authority should have been the person, who was competent to remove him from his office. The sanctioning authority, R.K. Awasthi (P.W.-2) has admitted in his cross-examination at para-9 that he was not competent to remove the appellant from his office. Hence, it is a material irregularity, which affects the legality of the cognizance and trial against this appellant.

7. It is also submitted by the learned counsel for the appellant that proof of demand and acceptance of illegal gratification is sine-qua-non for consideration of offence under Section 7 (1) of P.C. Act, regarding which reliance has been placed on the judgment of Hon'ble Supreme Court in case of State of ***Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede***[1], and in case of ***State of Punjab Vs. Madan Mohan Lal Verma***[2]. It is also submitted that recovery of amount itself can not prove the charge against the appellant regarding which reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***Suraj Mal Vs. State (Delhi Administration)***[3]*.* Hence, for this reason, the conviction against the appellant is bad-in-law and the appellant deserves to be acquitted in this case.

8. In reply, State Counsel submits that there is no issue of non-identification of the appellant/accused on the spot of the incident, as the trap witnesses have clearly stated about identification of the appellant on the spot and other circumstantial evidence are present in the shape of recovery of tainted money from the possession of the appellant, which reverses the burden on the accused. Simply for the reason that the complainant was not personally acquainted with the appellant, does not absolve him

1 (2009) 15 SCC 200
2 (2013) 14 SCC 153
3 (1979) 4 SCC 725

from the crime committed**.** There is sufficient proof on record through statement given by the witnesses regarding demand and acceptance. The transcript of the recorded conversation also is another proof of demand made by the appellant. Panch witnesses have clearly supported the prosecution case.

9. It is also submitted by the State counsel that as provided under Section 19 Sub-Section (3) of P.C. Act, that no findings, sentence or order passed by the Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision, on the ground of absence of, or any error, omission, or irregularity in the sanction required under Sub-Section (1) of Section 19 of Prevention of Corruption Act, unless it is the opinion of that Court, a failure of justice has in fact been occasioned because of such error omission or irregularity in the sanction granted. There is clear evidence on record to show that the appellant has committed the offence, hence, merely for the reason that sanction has not been granted by the proper and competent person, the conviction against the appellant can not be set-aside.

10. Reliance has been placed by the State Counsel on the judgment of Hon'ble Supreme Court in case of ***Hazari Lal Vs. The State (Delhi Admn)***[4], in which it was held that, if the, evidence of the police officer, who laid the trap have been reliable in such case corroboration would not be necessary**.** In another case of ***M.W. Mohiuddin Vs. State of Maharashtra***[5], it was held by the

4 AIR 1980 SC 873
5 (1995) 3 SCC 567

Hon’ble Supreme Court that once the accused come into possession of tainted money, the only inference is that he accepted the same. It is further submitted that the Hon'ble Supreme Court in case of ***B. Noha Vs. State of Kerala & Another***[6] has held that no such burden is cast on the prosecution to prove the demand or motive by the direct evidence, which can be deduced from the facts and circumstances of the case in the particular case as well. On the contrary, it is the burden on the accused to prove that he has received the amount for some legal cause. Reliance has also been placed on the judgment of Hon’ble Supreme Court in case of ***Krishna Ram Vs. State of Rajasthan***[7], in which it was held that once the money was recovered from the possession of the appellant, the burden under Section 20 shifts upon the appellant/accused. It is submitted that the appellant has failed to give any explanation, as to in what manner, he has received the money from the complainant. Hence, no case is made out for acquittal in this case.

11. I have heard the learned counsel for the parties and perused the record of the Court below.

12. The question raised in this appeal is only regarding the statement of non-identification made by the complainant – Nand Kumar Sahu (P.W.-4), hence what can be the effect of his statement needs to be considered.

---

6 (2006) 12 SCC 277
7 (2009) 11 SCC 708

13. Nand Kumar Sahu (P.W.-4) has not identified the appellant in the Court. He has stated that earlier he was granted electric connection in his agricultural fields, but the electric supply was stopped without any reason. When he approached the department, he was informed that he has to make expenditure, then he paid Rs.5,000/- to somebody and he can not said that to whom he paid the amount. Subsequent to that, he approached the ACB, Raipur and he was given a tape recorder to record the conversation regarding demand of bribe. He was told by the lineman that the amount was to be paid to the high officer, then he went to the house of electrical officer and prayed for restoration of his electric connection at that time, the officer made a demand of Rs.5,000/-. Then he again went to ACB and gave recorded conversation. He had come to know that name of the appellant is Khare after he has received the notice. He has further stated about arrangement that were made with respect to the trap proceeding, which is not disputed. He has stated about going to the house of electrical officer and give bribe amount to the said officer and also stated that one ACB officer was also along with him.

14. As the witness omitted to make some statement according to his previous statement, with the permission of the Court, the prosecutor asked leading question, in which he has denied that he approached the Junior Engineer of Jamgaon (T) for installation of electric connection and it is also denied that the

Junior Engineer made demand of Rs.10,000/- from him as illegal gratification. He has stated that he does not know, if he had given amount of Rs.5,000/- to the appellant. Although he has admitted that out of that amount given, the electrical officer has returned amount of Rs.500/- to the witness. Subsequently, he had narrated about the trap procedure. He has further made admission on the leading question by the prosecutor that he has knowledge that Junior Engineer was posted as electrical officer at the time of incident and he had made a demand of Rs.10,000/- from him. In cross-examination by the defence, he has again stated that he does not know, who was the Junior Engineer posted at the time of incident and clearly admitted that he has not identified the appellant/accused, who was present in the Court. It is further stated that he had not stated about the name of the appellant to the ACB. On scrutinizing the evidence of this witness it has appeared that except identifying the appellant as the person accused, he has stated everything about demand of bribe money and payment of bribe money and also regarding all procedure of trap, which will go to show that for the installation or restoration of the electric connection in the agricultural fields of the complainant or his wife, a demand of bribe Rs.10,000/- was made, regarding which this witness has complained to ACB. Subsequently, trap was arranged, in which demanded bribe was given to one electrical officer to whom this witness has not identified. Thus the statement of Nand Kumar Sahu (P.W.-4) is in partial support of the prosecution case.

15. R.K. Kashiv (P.W.-7) is witness of trap proceeding. He has stated that, when he arrived in the office of ACB, Raipur on 31.10.2009, he was informed by the complainant that Junior Engineer of Jamgaon (T) has demanded Rs.5,000/- as bribe for restoration of electric connection. He has given statement about preparation of trap proceeding, and when he and other members of the trap party arrived on the spot, the complainant proceeded towards the house of the appellant and along with him trap witness Ranga accompanied him as shadow. Then the complainant – Nand Kumar Sahu (P.W.-4) came out from the house of the appellant and gave pre-decided signal, this witness along with members of team of ACB entered in the house of the appellant. After preliminary introduction of the trap party, the appellant on asking introduced himself as Junior Engineer, Vijay Kumar Khare. Thereafter, the appellant admitted accepting money from the complainant and keeping the same in the pocket of his pant. Subsequent to which, all the proceedings of trap was completed, which were regarding washing the hands of members of team of trap with the solution of sodium carbonate, the colour of which remained unchanged, washing of hands of the appellant, complainant including washing of half pant of the appellant and in all these washing, in the separate solutions, they turned into pink colour, which he has stated that same were preserved and sealed separately. He has stated that he took the search of the

appellant and found 9 currency notes of Rs.500/- from the pant pocket of the appellant and then appellant informed that he has returned one currency note of Rs.500/- to the complainant. He has admitted in his cross-examination that the appellant has received Rs.5,000/- from the complainant and then by keeping only Rs.4,500/- for electric connection, had returned Rs.500/- to the complainant. But only by this admission it does not appear that the acceptance of currency notes from the complainant can be regarded as any legal acceptance. The other witness on this point are Lochan Pandey (P.W.-3), who has recorded the FIR (Ex.P-3).

16. A.K. Lakhera (P.W.-5), the Executive Engineer of CSPDCL has stated that the appellant was posted as Junior Engineer in Jamgaon (T), District – Durg vide Ex.P-12. He has stated that an application for installation of permanent electric connection of Kunti Sahu, the wife of the complainant (P.W.-4) was filed regarding which documents has been produced on record vide Ex.P17-C. In cross-examination, he has again reiterated that vide order Ex.P-11, the appellant has taken charge of Electricity Distribution Center, Jamgaon (T) on 06.05.2009 and there is no such other statement made by him to this effect that the appellant was not posted on the date of incident. Though he has admitted that Junior Engineer is empowered to collect fees for electricity connection in case the cash counter is closed, regarding which the receipt is issued on later date.

17. Constable -Ram Pravesh Mishra (P.W.-6) is the witness of preliminary stage, when the trap procedure was demonstrated to the complainant and the witnesses in the office of ACB. Chandrasekhar Soni (P.W.-9) is the Patwari, who has prepared the spot map vide Ex.P-17. No dispute has been raised in this appeal regarding the preliminary of the trap procedure and also regarding the recovery of tainted money from the pocket of pant of the appellant and also regarding the test conducted for presence of phenolphthalein in the hands of the complainant/ accused-appellant and regarding statement of the witness – R.K. Kashiv (P.W.-7), who searched and recovered the same from the pant pocket of the appellant. Similarly, the investigation regarding the presence of phenolphthalein on the currency notes and on the pant pocket of the appellant is also not disputed. Hence, there is no need to discuss in detail the evidence in this respect. There is evidence present that the appellant was posted and in-charge on the date and time of the incident, when the application for installation of his electric connection was pending that was filed by Kunti Sahu, the wife of the complainant – Nand Kumar Sahu (P.W.-4). The statement given by A.K. Lakhera (P.W.-5) further confirms the same.

18. The main question raised by the counsel is the non-identification of the appellant by the complainant – Nand Kumar Sahu (P.W.-4), before the Court. The complainant has categorically stated that demand of bribe was made by electricity officer and the same

was delivered by him to that electricity officer, who had made the demand, that electricity officer received bribe money and kept inside his pant pocket. Soon after this, the trap party entered the spot i.e. the house of the appellant.

19. R.K. Kashiv (P.W.-7) has very clearly stated that after entering the house of the appellant and introduction of members of the trap party, the appellant said that he is Junior Engineer V.K. Khare. This has happened immediately after the bribe money was given by the complainant – Nand Kumar Sahu (P.W.-4) to the said electricity officer and subsequent to that all the recovery proceedings that has been narrated in the evidence by the witnesses, shows that bribe money was recovered from the possession of the appellant, which was kept in the pocket of his half pant as stated by R.K. Kashiv (P.W.-7), which is unrebutted statement. Apart from this, Inspector, Jerol Lakda (P.W.-8), who is investigator in this case and conductor of trap has also similarly stated that the appellant was present, who received bribe money and it was from him, the bribe money was recovered. Hence, on the basis of this evidence, there is no question of mistaken identity. Had it been some other person to whom the complainant had paid the money in that case, the said bribe money should not have been recovered from the possession of the appellant, which is not so in this case. Hence, the lack of memory of the complainant – Nand Kumar Sahu (P.W.-4) is supplemented with the memory of R.K. Kashiv (P.W.-7), Inspector, Jerol Lakda (P.W.-

8) and circumstantial evidence of recovery of tainted bribe money from the appellant, which clearly established that it was the appellant, who has received bribe money from the complainant – Nand Kumar Sahu (P.W.-4), hence for this reason forgetfulness of Nand Kumar Sahu (P.W.-4), which may be deliberate can not come to any help of the appellant in this case.

20. Now the question remains whether there was any demand of bribe money was made by the appellant. Regarding which, there is clear evidence given by Nand Kumar Sahu (P.W.-4) that for installation of electric connection, he was demanded of bribe of Rs.10,000/- by the electricity officer, who is clearly identified as the appellant. The proceeding of installation of electric connection was pending on the date of incident. It is reflected from the evidence of defence witness also O.P. Bhardwaj (D.W.-1), Executive Engineer of CSPDCL, who has stated that on the basis of Ex.-D-1, Ex-D-2, D-2C, Ex.D-3, Ex.D-3C that application for electric connection was filed on 04.05.2009 in electricity distribution center Jamgaon (T), and according to the register the electricity connection was installed from 23.10.2009. He has further stated that for installation of electric connection, the subscriber has to deposit the required fees. In case, the counter is closed, the Junior Engineer can receive the amount and issued receipt subsequently. In cross-examination he has admitted that he was not posted in that electricity distribution center, Jamgaon (T) at the time of incident.

21. Executive Engineer A.K. Lakhera (P.W.-5) has proved the documents of electricity department in which the document, Ex.P-17-C discloses that the payment for electricity connection of Kunti Sahu and Nand Kumar Sahu were already made and nothing was due to be paid on the date of incident. It is not a case that installation of electric connection was kept pending because according to the complainant - N.K. Sahu (P.W.-4), the electricity connection was already installed, which was disconnected and it was for reconnection, bribe was demanded from him. Whereas the complaint (Ex.P-5), filed by the complainant discloses that the complainant had talked to the electricity officer for installation of permanent electric connection and it was for that the demand was made from him. Though the complainant (P.W.-4) omitted to make statement in his examination-in-chief, but he has clarified in the leading question put to him by the prosecutor that he had talked with the electricity officer for installation of permanent electricity connection and it was not a case that on the date of incident, the installation of electric connection was pending but the complainant was concerned in continuance of the electric supply because of which he had to approach the appellant. Hence, there are circumstances present for making demand, which are supported with the statement of complainant Nand Kumar Sahu (P.W.-4). Hence on this basis it can be held that bribe money was paid to the appellant on the basis of the demand made by him from the complainant. On the basis of this

discussion, it is found that the finding of the Court below on this point does not suffer from any infirmity. The proof against the appellant is complete that he demanded and received bribe money.

22. Another point raised in this appeal is that the appellant after receiving the bribe money of Rs.5,000/- has returned Rs.500/- to the complainant, which shows that the same was received for payment of electricity charges for installation fees. But no such evidence have been brought by the defence or admitted by any of the witness of the prosecution that there had been any dues against the appellant. Hence, this argument is also without any substance.

23. Another point raised by the counsel for the appellant is the irregularity and illegality of the sanction granted for prosecution against the appellant. Section 19 Sub-Section (3) of the P.C. Act is self explanatory and it has been referred in the judgment of ***State of Karnataka Vs. T.R. Krishnamurthy***[8] mentioning the provisions of Section 19 Sub-Section (3) of the Act that merely on the ground of irregularity of sanction, no finding of Court below can be reversed unless such grant of sanction has caused miscarriage of justice.

24. It was further observed that power to give sanction for prosecution can be conferred on any authority, Such authority may be of the department, in which the public servant is working

8 2003 CRI. L. J. 3977

or an outside authority. All that is required is that the authority must be in a position to appreciate the material collected against the public servant to judge whether the prosecution contemplated is frivolous or speculative.

25. It can be said that Junior Engineer R.K. Awasthi (P.W.-2), Chief Engineer, CSPDCL has granted sanction for the prosecution of the appellant in respective capacity. Hence, under these circumstances, I am of this considered view that sanction granted for prosecution of the appellant can not put to any question before this appellate Court in accordance with the provisions of Section 19 (3) of Prevention of Corruption Act. Hence, this ground raised in this appeal also fails.

26. Resultantly, after close scrutiny of all the evidence and discussion on it, it is found that this appeal is without any substance and it is dismissed accordingly.

27. The appellant is reported to be on bail, his bail bonds are canceled and he is directed to surrender to serve out the remainder of the sentence.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram