IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.128 of 2003

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MAHADEO CHAUDHARY son of late Raghu Chaudhary, Ex-Officer Incharge, Karpi Police Station, Distt-Jehanabad, resident of Village and PO Parari, PS-Barigawn, Distt-Saharsa at present, Sub-Inspector of Police, Motihari District. ... ... Appellant/s

Versus

STATE OF BIHAR ... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anil Kumar Jha, Sr. Adv.
		Mr. Dinesh Chaudhary, Adv.
		Mr. Prafull Chandra Thakur, Adv.
For Vigilance	:	Mr. Ajay Mishra, Adv. (Vigilance)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

05-02-2019 Appellant, Mahadeo Chaudhary has been found guilty for an offence punishable under Section 7 of the P.C. Act and sentenced to undergo RI for 1 year as well as to pay fine of Rs. 1500/- in default thereof, to undergo RI for 2 months additionally, under Section 13(2) read with Section 13(1) (d) of the P.C. Act and sentenced to undergo RI for 2 years as well as to pay fine of Rs. 2000/- in default thereof, to undergo RI for 2 months additionally vide judgment of conviction and sentence dated 26.02.2003 passed by Special Judge, Vigilance, South Bihar, Patna-1 in Special Case No. 34/92 arising out of Vigilance PS Case No. 24/92.

2. Bishnupad Prasad (PW-7) filed a written report before Director General of Police (Vigilance) disclosing therein that on 18.05.1992, O/C of Karpi PS, Mahadeo Chaudhary along with police escort came at his house, conducted search in order to apprehend his brother Jugal Prasad in connection with Karpi PS

Case No. 52/92, although, his brother was not an accused in connection therewith. On 19.05.92, he along with Ambika Prasad had gone to Karpi PS and met with Mahadeo Chaudhary. At that very moment, Mahadeo Chaudhary instructed either to pay Rs. 20,000/- or his brother will be sent to jail. On great persuasion, the matter was settled over Rs. 7,000/-, otherwise, he was threatened that his brother will be implicated. Because of the fact that he does not want to pay the bribe, hence prayed for taking necessary action.

3. As directed, verification with regard to allegation was conducted by Ram Chandra Lal (PW-1) and after having verification report, case was registered and then, pre-trap, exercise was demonstrated on the allegation and then on 26.05.1992 accused/appllant was apprehended having been in possession of tainted amount appertaining to Rs. 3000/- during trap and in likewise manner, both the hands of the accused/appellant were washed in solution of sodium carbonate which changed its colour on account of presence of phenolthiline powder, seizure list was prepared, case was investigated, followed with submission of charge-sheet, meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-

examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that appellant has been planted in this case by his own departmental people with the help of so-called, allegationist, Bishnupad Prasad on imaginary ground and further, in order to substantiate the same examined two DWs as well as also exhibited relevant documents.

5. In order to substantiate its case, altogether 12 PWs have been examined on behalf of prosecution who are PW-1, Ram Chandra Lal, PW-2, Satyadeo Mistry, PW-3, Parshuram Singh, PW-4, Ajay Kumar Singh, PW-5, Anal Lakara, PW-6, Md. Shamim, PW-7, Bishnupad Prasad, PW-8, Chandra Bhushan Singh, PW-9, Md. Saiduddin Sah, PW-10, Vijay Singh, PW-11, Vinay Kumar Pandey and PW-12, Lal Bahadur Singh. Side by side has also exhibited Ext-1, is the endorsement and signature of officer in-charge Vigilance PS Namely, Harihar Choubey on the Complaint petition, 1/1, is the endorsement and signature of Sri D.P. Ojha the then DIG, Vigilance on complaint petition, Ext-1/2, is the endorsement and signature of Verifier (PW 1) on the complaint petition, Ext-2, is the verification report, Ext-3 is memorandum of GC notes, Ext-4 is signature of Sri Ram Chandra Lal, Verifier on memorandum of GC notes, Ext-1/3, is

the endorsement and signature of the complainant on memorandum of GC notes, Ext-1/4, is the endorsement and signature of PW -6, Md. Shamim on memorandum of GC notes, Ext-1/5, is the endorsement and signature of PW-9, Md. Saiduddin Sah on memorandum of GC notes, Ext-5, is the search list, Ext-5/1 is the endorsement and signature of accused, Mahadeo Chaudhary over search-list, Ext-5/2 is the endorsement and signature of PW-9 over search-list, Ext-5/3, is the endorsement and signature of PW-6, over search-list, Ext-3/1 is the endorsement and signature Special Magistrate over GC notes memorandum, Ext-5/4, is the signature and endorsement of Special Magistrate over search-list, Ext-6 is the complaint petition, Ext-7 is application of complainant whereby he has produced Rs. 3000/-, Ext-8 is sanction order, Ext-9 is the report of Forensic Science Laboratory, Government of Bihar and Ext-10 is Formal FIR.

6. In likewise manner, defence has also examined two Dws- DW-1, Ram Singhasan Ram, ASI and DW-2, Ram Pratap Pawan, ASI and has also exhibited Ext-A series, Sanha No. 289 dated 17.05.92 and Sanha No. 421 dated 24.05.92.

7. From the nature of evidence, whatever been adduced at the end of appellant, it is evident that save and except,

PW-2 and PW-3 who have been tendered, PW-12, a formal witness who had simply exhibited the FIR having in pen of Harihar Choubey O/C, Vigilance, Patna, PW-10, Vijay Singh, reader of DIG who simply exhibited the sanction order stood as a formal in nature, the rest witnesses happen to be material one.

8. It is also evident from the evidence of PW-8 that apart from having on the factum of post-trap exercise, he has also exhibited the alleged tainted currency notes as material exhibit and in likewise manner, the diary which is said to be seized as the cash was pressed by the aforesaid diary over bed occupied by the appellant/accused. Apart from this, PW-7 is the allegationist while PW-1 stood as a verifier and subsequently thereof, along with other witnesses became member of pre-trap event as well as during course of event. Furthermore, as is evident Visheshwar Yadav and Chandra Bhushan Singh were included in the team on the pretext of watcher out of whom only Chandra Bhushan Singh has been examined as PW-8 while Visheshwar Yadav has not been examined and for that, no explanation has been adduced on behalf of prosecution. In the aforesaid background, now the case has to be seen. Because opf the fact that the facts of the case relates with trapping, therefore, prosecution is under obligation to substantiate demand and acceptance, and on being substantiated,

prosecution though rebuttable in accordance with Section 20 of the Act, has to be inferred against the accused.

9. There happens to be specific allegation at the end of PW-7, that the appellant/accused along with armed party conducted a raid at his house in the night of 18.05.1992 as was in search of his brother Jugal. The most pertinent point on this very score is that he happens to be resident of Paliganj Police Station, that means to say, another police station than commended by the accused and further, none of the prosecution witnesses has disclosed that both the police stations i.e. Karpi as well as Paliganj are contiguous to each other. Moreover, it was not alleged that accused was fleeing and police personnel were chasing, crossing the border rather it happens to be a case whereunder in a pre-planned manner the police official in order to apprehend Jugal, brother of allegationist, suspected to be an accused was to be apprehended and for that, raid was conducted. In the aforesaid background, at least, would have put an obligation upon the appellant/accused to have information to the Paliganj Police Station for that purpose and further, in presence of Paliganj Police, a raid would have been conducted. None of the witnesses has stated including that of PW-11, the I.O. that he had gone to Paliganj in tracing out whether raid was conducted

at the house of the allegationist and for that, whether Paliganj Police Station was informed or not. In likewise manner, there happens to be complete silence at the end of the prosecution with regard to proper verification from the station diary having been kept at Karpi Police Station to see whether the raid was conducted at village-Imamganj, native place of allegationist in order to apprehend Jugal, his brother relating to Karpi PS Case No. 52/92.

10. The aforesaid theme has got relevancy in the background of the fact that there should be an occasion for an accused to favour and for that, gratification was demanded as well as accepted. That means to say, one part is found completely blank. That means to say, the mens rea has not been substantiated.

11. In its continuity, one peculiar thing which the prosecution has itself brought up on record is also to be seen. According to the allegationist, it was Ambika Prasad whom he had taken to the Karpi Police Station where they talked with the appellant/accused who demanded Rs. 20,000/- and the same was finalized at Rs. 7000/-. When PW-1 had gone to verify along with PW-7 he had detailed the event under one para of his report and in likewise manner, he had spoken under para-3 of the

examination-in-chief as “ then accused has stated that once you have come along with Sonadhari Singh and Ambika Prasad” and further, the manner whereunder subsequent revelation is there creates doubt more particularly, when the verification report Ext-2 is gone through, whereunder he had incorporated that the accused has said that firstly you came along with Sonadhari Singh and then along with Ambika Prasad and then he inquired from the Officer Incharge, and in pursuance thereof, the Officer Incharge disclosed that before his joining, name of his brother is found connected with 3-4 other cases and the file is kept on the table itself which he could see, never got the light though, on that very score, there happens to be no cross-examination at the end of the appellant/accused also. Furthermore, though there happens to be presence of witnesses PWs-4, 5, 6, 7, 8 who have substantiated the pre-trap event as well as post-trap event, however, creating some sort of doubt after having parallel scrutiny as well as going through Ext-A series, the Station Diary Entry over which, the learned lower court had given its finding at page no.12 of the judgment in following way:-

> “ In my opinion whatever it may be, it makes no difference to the prosecution case.”

12. The settled proposition of law as culled down by the Hon’ble Apex Court is that mere recovery of tainted money

will not justify the conviction of an accused unless and until, there happens to be *mens rea* that means to say demand and acceptance. On account of absence thereof, due to lapse on the part of the prosecution, whereunder it failed to bring on the record that Jugal was an accused in any case relating to Karpi Police Station, a plausible ground for demand along with cogent material with regard to presence of appellant along with police personnel at the place of allegationist for the purpose of conducting raid is a circumstance, more particularly, when there happens to be some sort of fragrance at the end of allegationist himself that his brother was being looked after on account of his association with a banned organization i.e. Naxalite. It is strange enough that neither any document has been filed to say that Jugal was an accused nor any villagers/family member came forward to substantiate the incident of rape, so really prosecution succeeded in proving demand followed with acceptance.

13. So far process of pre-trap as well as trapping is concerned, that happens to be consistency. So far recovery of tainted amount is concerned, it is evident from the evidence of PW-1 as well as PW-7 that after counting the same, the same was kept over Chauki pressed by a diary, followed with post-trap exercise.

14. In ***Mukhtiar Singh (since deceased) through his legal representatives v. State of Punjab*** reported in ***(2017)8 SCC 136,*** it has been held as follows***:-***

12. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:

"7. ***Public servant taking gratification other than legal remuneration in respect of an official act.*** - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extent to seven years and shall also be liable to fine.

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13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, -

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13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A.

Subair vs. State of Kerala[(2009) 6 SCC 587] , this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposited in State of Kerala vs. C.P. Rao [(2011) 6 SCC 450] that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

14. In P. Satyanarayana Murthy [(2015)10 SCC 152], this Court took note of its verdict in B. Jayaraj vs. State of A.P.6 underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

> "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (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 6 (2014) 13

SCC 55 two sections of the Act. 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 and 13 of the Act would not entail his conviction thereunder." (emphasis supplied)

15. The textual facts in Somabhai Gopalbhai Patel [(2014)15 SCC 103] and Mukhtiar Singh (supra) and the quality of evidence adduced by the prosecution are clearly distinguishable and are thus of no avail to the prosecution as would be discernible from the analysis of the materials on record."

16. It is in the above adumbrated legal enjoinment, that the evidence on record has to be scrutinised. Having regard to the gravamen of the charge and the imperatives of demand of illegal gratification, the receipt and recovery thereof, the evidence on record relatable thereto only need be noticed.

15. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Since appellant is on bail, he is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.02.2019
Transmission Date	07.02.2019