

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3102 of 2017

Arising Out of PS. Case No.-6 Year-2001 Thana- C.B.I CASE District- Patna

Ram Naresh Tiwary, aged about 70 years, S/o Late Gayatri Tiwary, R/o Village- Awakhra, P.S.- Chainpur, District- Kaimur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shambhu Narayan Singh, Advocate
For the Vigilance : Mr. Ajay Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-02-2019

This appeal is directed against the judgment of conviction dated 12.09.2017 and the order of sentence dated 14.09.2017 passed by the learned Special Judge, Vigilance- 1st, Patna in Special Case No. 17 of 2000 whereby after holding the appellant guilty for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short 'P.C. Act') he has sentenced him to undergo imprisonment for a term of five years and fine of Rs. 20,000/- and in default to undergo simple imprisonment for a further period of six months.

2. In order to appreciate the issues involved in this appeal, certain facts need be mentioned hereinbelow.

3. One Shiv Lagan Singh had filed a complaint under Section 200 of the Code of Criminal Procedure (for short



‘Cr.P.C’) in the court of Special Judge, vide complaint (Special) Case No. 17 of 2000 stating therein that he has been made accused in Punpun P.S. Case No. 39 of 1996 instituted under Section 304-B read with 34 of the Indian Penal Code (for short ‘I.P.C’). In that case, on the basis of the order passed by the learned Chief Judicial Magistrate, Patna in exercise of power conferred under Section 83 of the Cr.P.C, movable and immovable properties belonging to him were attached by Mr. Marag Marandi, an Assistant Sub-Inspector of police of Punpun police station on 12.07.1996. Thereafter, he surrendered before the court on 22.07.1996 and the learned Chief Judicial Magistrate, Patna, vide order dated 31.07.1996, directed the Officer-in-charge of the Punpun Police Station to release the properties seized from his house in connection with Punpun P.S. Case No. 39 of 1996 from attachment. The said order was served upon the Officer-in-charge of Punpun police station by his son Anil Kumar Singh whereafter though most of the attached properties were released, certain properties were not released from attachment by him. His son requested him several times for release of the retained properties, but they were not returned. Even the court repeatedly directed the Officer-in-charge of the police station to return all the properties attached



from his house and furnish a report thereof, but the order of the court was also not complied. On 23.07.2000 and on 15.08.2000 when he himself went to the police station and requested the Officer-in-charge, Punpun police station, namely, Mr. Ram Chandra Ram and the appellant, a Sub-Inspector of police posted in the police station to return the remaining articles, they demanded Rs.1000/- as illegal gratification. He stated in his complaint that being a poor farmer he is not in a position to fulfill the illegal demand of the Officer-in-charge. He made a request for taking proper action against them.

4. On receipt of the said complaint, the learned Special Judge, Vigilance, South Bihar, Patna sent the same to the Vigilance Police Station for verification.

5. After receipt of the complaint from the Court, a preliminary inquiry into the matter was handed over by the Officer-in-charge of the Vigilance Police Station to one Satyadeo Mistri, Inspector of Police, Vigilance Investigation Bureau, Patna.

6. On verification, Mr. Satyadeo Mistri, Inspector of Police found the allegations made by the complainant Shiv Lagan Singh to be true. He submitted a written report in this regard on 16.05.2001 to Mr. Shiv Shankar Jha, the Deputy



Superintendent of Police-cum-Officer-in-charge of the Vigilance Police Station stating that therein that he had made inquiry from the complainant Shiv Lagan Singh and his son Anil Kumar Singh, who fully supported the allegation of the demand of illegal gratification of Rs. 1000/- by the appellant and Ram Chandra Ram. On inquiry in this regard, Mr. Ram Chandra Ram, denied the allegations and stated that the remaining articles such as door planks, window planks and *palang* would be returned to the complainant. On further inquiry as to why these articles were not returned despite the order of the court, he could not give any satisfactory explanation. He further stated in his report that the inquiry conducted by him clearly established that the Officer-in-charge Ram Chandra Ram and the appellant demanded Rs. 1000/- as illegal gratification from the complainant Shiv Lagan Singh and his son Anil Kumar Singh in lieu of release of the articles, which were not returned pursuant to the order of release passed by the court.

7. On the basis of the aforesaid written report submitted by Mr. Satyadeo Mistri, Inspector of Police, Vigilance Investigation Bureau, Patna, Mr. Shiv Shankar Jha, Deputy Superintendent of Police-cum-Officer-in-Charge of Vigilance Police Station, Patna instituted Vigilance P.S. Case No. 06 dated



16.05.2001 under Section 7 of the P.C. Act against the appellant and Mr. Ramchandra Ram and investigation was handed over to one Pratap Shekhar Sinha, Inspector of Police, Vigilance Investigation Bureau, Patna.

8. It would further appear that though Mr. Pratap Shekhar Singh initially investigated the case, the investigation was handed over to one Bhupendra Narain Sinha, Deputy Superintendent of Police, Vigilance Investigation Bureau, Patna subsequently.

9. On completion of investigation, said Bhupendra Narain Sinha submitted a report under Section 173(2) of the Cr.P.C in the court of Special Judge, Vigilance, South Bihar, Patna on 26.09.2005 vide charge-sheet no. 16 of 2005 dated 24.09.2005.

10. The charge-sheet submitted in the court of Special Judge, Vigilance would further indicate that apart from the two FIR named accused persons, one Jai Ram Sharma, the then Malkhana in-charge of Punpun police station was also sent up for trial as in course of investigation it came to light that the attached properties were kept in the Malkhana of the police station and he had dishonorably recorded in the station diary that four pairs of door plank attached from the house of the



complainant Shiv Lagan Singh had been completely damaged.

11. After receipt of the police report, the learned Special Judge, Vigilance, Patna took cognizance of the offences punishable under Section 409 of the Indian Penal Code (for short 'IPC') and Section 7 of the P.C Act against all the three sent up accused persons whereafter charges under Section 409 of the IPC and Section 7 of the P.C Act were explained to them to which they pleaded not guilty. Hence, the trial commenced.

12. The accused Ram Chandra Ram absconded in course of trial. Hence, his case was separated vide order dated 13.06.2016 passed by the trial court and the trial proceeded against the appellant and co-accused Jai Ram Sharma, the Malkhana in-charge of Punpun Police Station.

13. In order to prove the case, the prosecution examined altogether eight witnesses, namely, PW-1 Anil Kumar, PW-2 Arvind Kumar Singh, PW-3 Shiv Lagan Singh, PW-4 Satyadeo Mistri, PW-5 Bhupendra Narain Singh, PW-6 Pratap Shekhar Singh, PW-7 Prabha Shankar Pandey and PW-8 Shiv Kumar Jha.

14. Besides the oral evidence, the prosecution also proved certain documents, which were marked as exhibits, such as inventory of articles attached under Section 83 of the Cr.P.C



(Ext-1), petition dated 26.08.1996 filed in Punpun P.S. Case No. 39 of 1996 (Ext-2), certified copy of order sheet of S.Tr. No. 308 of 1997 (Ext-3), certified copy of order sheet of Punpun P.S. Case No. 39 of 1996 (Ext-4), certified copy of order sheet of Complaint Case no. 600(c) of 2002 (Ext-5), written statement of Anil Kumar (Ext-5/1), verification report (Ext-6), letter no. 841 dated 27.11.2000 (Ext-7), formal FIR (Ext-8) and signature of Sheo Shankar Jha on the formal FIR (Ext-9).

15. Though, the accused persons pleaded innocence, they did not lead any oral or documentary evidence in trial.

16. After the evidence of the prosecution was closed in trial, for the purpose of enabling the accused persons personally to explain any circumstances appearing in evidence against them, the court examined them under Section 313 of the Cr.P.C. All the circumstances appearing in evidence against them were explained by the court. They denied all the allegations explained to them in their respective statements recorded by the court.

17. After the explanation of the accused persons under Section 313 of the Cr.P.C, arguments were advanced on behalf of the parties and after appreciating the evidence led and the arguments advanced before the court, vide impugned judgment dated 12.09.2017, the trial court held the appellant guilty under



Section 7 of the P.C Act. However, he was exonerated of the charge under Section 409 of the IPC. As far as the co-accused Jai Ram Sharma is concerned, the trial court acquitted him of both the charges.

18. Mr. Shambhu Narayan Singh, learned counsel for the appellant submitted that the trial court has completely failed to appreciate the evidences on record. It could not have convicted the appellant in absence of the charge of acceptance of any pecuniary advantage from anyone as illegal gratification. In support of his submission, he has placed reliance on the decisions of the Supreme Court in the matter of *Mukhtiar Singh Vs. State of Punjab [AIR 2016 SC 3100]*; *L. Laxmikanta Vs. State by Superintendent of Police, Lokayukta [2015(2) PLJR 263(SC)]*; *Satvir Singh Vs. State of Delhi [(2014) 13 SCC 143]*; *K.S. Panduranga Vs. State of Karnataka [2013 Cr.L.J. 1665]*; *M.K. Harshan Vs. State of Kerala [AIR 1995 SC 2178]* and *Dashrath Singh Chauhan Vs. Central Bureau of Investigation [AIR 2018 SC 4720]*.

19. Per contra, Mr. Ajay Mishra, learned counsel appearing for the vigilance submitted that the witnesses examined in course of trial are consistent. The charge under Section 7 of the P.C Act relating to demand of illegal



gratification against the appellant has been proved beyond reasonable doubts. It is not disputed that at the time of occurrence, the appellant was holding office as a public servant and he had demanded illegal gratification from the complainant Shiv Lagan Singh for release of properties attached under the order of the court. He contended that the demand made by the appellant was not the legal remuneration rather it was an illegal act on his part and no error can be found with the judgment passed by the trial court whereby he has been held guilty for the offence punishable under Section 7 of the P.C. Act. He further contended that mere demand de hors the acceptance of illegal gratification would be sufficient to convict an accused under Section 7 of the P.C. Act.

20. Having heard learned counsel for the parties, at this stage, I would like to briefly narrate the evidences collected in course of trial.

21. PW-1 Anil Kumar Singh and PW-3 Shiv Lagan Singh have fully corroborated the prosecution case as alleged in the FIR.

22. PW-2 Arvind Kumar Singh is the brother of PW-1 Anil Kumar Singh and son of the PW-3 Shiv Lagan Singh. In his examination-in-chief, though he has corroborated the other part



of story, he has stated that when Ram Chandra Ram had demanded illegal gratification, the appellant was also present there. He has not made allegation that the appellant had also made demand of illegal gratification.

23. PW-4 Satyadeo Mistri has stated in his examination-in-chief that in course of inquiry conducted by him he came to know that out of the 11 door pairs attached in connection with Punpun P.S. Case No. 39 of 1996, only 7 were released. Similarly, out of the three beds (*Palangs*) attached by the police, only two were released and out of 5 window pairs, only 3 were released to the complainant Shiv Lagan Singh by the Officer-in-charge of police Station. He has also corroborated the fact that the appellant and the Officer-in-Charge Ramchandra Ram had made demand of Rs. 1000/- as illegal gratification for release of rest of the properties, which were not released pursuant to the order of the court. In cross-examination he stated that while conducting inquiry, he had recorded the statement of Shiv Lagan Singh, Anil Kumar Singh and Arvind Kumar. He has also stated that he had made inquiry from the Officer-in-Charge of the police station as to why all the attached properties were not released in favour of the complainant Shiv Lagan Singh.



24. PW-6 Pratap Shekhar Singh has narrated the details of the properties attached under the order of the court in connection with Punpun P.S. Case No. 39 of 1996. He stated in his examination-in-chief that he had verified the Malkhana register of the police station on 16.05.2002 in course of investigation and found that out of 11 door pairs only 7, out of 3 *palangs* only 2 and out of 5 window pairs only 3 were released from attachment pursuant to the order of the court. He has further stated that in course of investigation he had recorded the statements of Satyadeo Mistri, Police Inspector, Vigilance Investigation Bureau, Patna, Arvind Kumar Singh and Anil Kumar Singh. On 11.10.2003, he had handed over the investigation to Mr. Bhupendra Narayan Singh.

25. PW-5 Bhupendra Narayan Singh has stated in his evidence that after the investigation was handed over to him, he conducted investigation of the case. He recorded statements of certain witnesses and on completion of investigation submitted charge-sheet in the court.

26. PW-7 Prabha Shankar Pandey has stated in his evidence that he has no knowledge about the case.

27. PW-8 Shiv Kumar Jha, the then Officer-in-charge of the Vigilance Investigation Bureau has identified his signature



on the formal FIR. He has stated that after receipt of the written report from Satyadeo Mistri, he handed over the investigation to Pratap Shekhar Sinha. In cross-examination, he has admitted that he has no personal knowledge of the case.

28. As seen above, from the evidences collected in course of trial, it would be evident that prosecution is consistent as far as the allegation of demand of illegal gratification from the complainant Shiv Lagan Singh by the appellant and Ram Chandra Ram is concerned. However, it is an admitted case of the prosecution that pursuant to the demand no payment was ever made by anyone.

29. Thus, the only issue involved in this case is as to whether the trial court was justified in convicting the appellant under Section 7 of the P.C Act in absence of the charge of acceptance of any pecuniary advantage from anyone as illegal gratification.

30. The issue as to whether mere demand of illegal gratification de hors acceptance by a public servant would constitute an offence punishable under Section 7 of the P.C Act is no more res integra.

31. In *Mukhtar Singh Versus State of Punjab* (supra), the Supreme Court observed as under:-



“It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the P.C. Act against the accused. **Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the P.C. Act. ...**”

(emphasis mine)

32. In *M.K Harsan Vs. State of Kerala* (Supra), the Supreme Court observed :-

“... in all this type of cases of bribery, two aspects are important. **Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence.** Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused the money had been put in the drawer as an illegal gratification. ...”

(emphasis mine)



33. In *K.S. Panduranga Vs. State of Karnataka* (Supra), the Supreme Court observed :-

“...It is well settled in law that demand and acceptance of the amount as illegal gratification is sine quo non for constitution of an offence under the Act and it is obligatory on the part of the prosecution to establish that there was an illegal offer and acceptance thereof.”

(emphasis mine)

34. In *Satvir Singh Vs. State of Delhi* (Supra), the Supreme Court observed :-

It is rightly contended by the learned Senior Counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have committed by him....”

(emphasis mine)

35. In *L. Laxmikanta Vs. State by Superintendent of police, Lokayukt* (Supra), the Supreme Court observed:-

“It is a settled principle of law laid down by this Court in a number of



decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7.”

(emphasis mine).

36. Thus, in the background of the evidence led before the court and in view of the ratio laid down by the Supreme Court in the aforestated decisions, the judgment of conviction and order of sentence passed by the trial court as against the appellant whereby he has been held guilty for the offence punishable under Section 7 of the P.C Act can not be sustained. In the absence of charge of payment of illegal gratification to the appellant pursuant to the demand, the twin requirements for proving the offence under Section 7 of the P.C Act, which has been held to be sine qua non by the Supreme Court, the trial court could not have held that the charge under Section 7 of the P.C. Act stands proved.

37. The impugned judgment of the trial court is not only erroneous but also suffers from error of law and, therefore, is liable to be set aside.



38. For the reasons stated above, the impugned judgment and order of the trial court are set aside. The appeal is allowed. The Jail Superintendent, Beur Central Jail, Patna is directed to release the appellant forthwith from the jail if he is not required in connection with any other case.

39. Registry is directed to communicate the above portion of the order to the Jail Superintendent concerned to comply with the directions issued to him.

(Ashwani Kumar Singh, J)

pradeep/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

