AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2658 of 1997

- Suresh Chand Tripathi (Dead) Through Legal Heirs incorporated as Per Hon'ble Court Order Dated 11-07-2019-

  (i) Smt. Shashi Tripathi W/o Late Suresh Chand Tripathi Aged About 80 Years

  (ii) Ashok Kumar Tripathi S/o Late Suresh Chand Tripathi Aged About 56 Years

  Both are resident of Titurdih, Police Station Mohan Nagar, District Durg Chhattisgarh

---- Appellants

Versus

- State of Madhya Pradesh (Now Chhattisgarh), through Special Establishment Police, Divisional Lokayukt Office, Raipur, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri B.P. Singh, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, P.L.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

19/09/2019

1. This appeal is directed against the judgment dated 18.12.1997 passed by the II Additional Sessions judge, Raipur in Special Sessions Trial No.10/1986 convicting the accused/appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and sentencing him to undergo RI for 3 years & fine of Rs.5000/- on each count respectively with default stipulation.

2. During pendency of this appeal, accused/appellant Suresh Chand Tripathi died and thereafter his legal heirs filed an application for prosecuting this appeal, which was allowed by this Court vide order dated 11.7.2019. Hence this appeal is being prosecuted by the legal heirs of the deceased appellant Suresh Chand Tripathi.

3. The facts of case, in brief, are that on 6.11.1985 a written complaint (Ex.P/1) was made by Aniruddha Singh Thakur, Secretary of Raipur District Clerk Cooperative Society to Superintendent of Police (Vigilance), Raipur to the effect that accused/appellant Suresh Chand Tripathi, Superintendent in Raipur Sub-Registrar Cooperative Society, has been demanding Rs.200/- per month for issuance of permit in favour of the complainant for supply of food-grains through Public Distribution System and now he is demanding Rs.400/- for two months for the said purpose which the complainant is not willing to give him. On this, the Superintendent of Police handed over the said matter for necessary action to K.R.Sharma, Superintendent of Police, Special Police Establishment, Raipur who constituted trap team and the witnesses of the trap team namely LP Tamboli and RS Sharma were introduced to the complainant. Thereafter, preliminary panchanama Ex.P/2 was prepared, the sodium carbonate solution was made and its effect was demonstrated. After obtaining four currency notes each of 100 rupees denomination from the complainant, phenolphthalein powder was applied thereon and the same were kept in his pocket with

clear instructions not to touch these notes prior to giving the same to the accused and that after giving notes to the accused, he should give signal to the trap team.

4. After completing formalities of trap proceedings, the trap team along with the complainant reached Platform No.1 of Railway Station, Raipur as the complainant informed the trap team that the accused has gone to railway station for going to Durg. Thereafter, the trap team sent the complainant for searching the accused and after some time the complainant and the accused were seen entering Platform No.1. Thereafter, both the complainant and the accused came out and as soon as the complainant gave signal to the trap team by scratching his head, VD Dhananjay, Inspector, caught hold of right hand of the accused and KK Sharma, DSP, caught hold of left hand of the accused. Thereafter, the accused was taken to GRP Police Station for further proceedings wherein fingers of both the hands of the accused were dipped into the sodium carbonate solution on which its colour turned pink which was sealed. On being enquired from the accused about the bribe amount, he informed that it is in his shirt pocket, which was taken out by panch witness LP Tamobli. After verification, the said notes were found to be the same which were given to the complainant for giving to the accused as per preliminary panchanama. When the said currency notes were dipped into the sodium carbonate solution, its colour turned pink and the same was sealed separately. Seizure panchanama Ex.P/4 of the notes was made. Statements of the witnesses were recorded. Seizure of the necessary

documents from the Registration Office was made vide Ex.P/10 and the seized articles were sent for chemical examination to FSL. FIR was registered against the accused and sanction for criminal prosecution of the accused was obtained vide Ex.P/15.

5. After completing investigation, charge sheet was filed against the accused under Sections 161 of IPC and 5(1)(d) & 5(2) of the Act of 1947. The trial Court initially framed charges under Section 5(1)(b)(2) of the Prevention of Corruption Act and Section 161 of IPC. However, after amendment in the said Act, on application being moved by the Special Public Prosecutor, charges were altered to Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The accused denied the charges and prayed for trial.

6. The prosecution in order to bring home the charges levelled against the accused/appellant examined 07 witnesses. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the offence. However, he admitted that permit is issued by the office of Sub Registrar, on signal being given by the complainant hands of the accused were caught by DSP Sharma and Dhananjay; when his hands were dipped into the solution its colour turned pink; as per Ex.P/4 notes were seized from him; his clothes were seized as per Ex.P/5 and on it being dipped into the solution, its colour tuned pink and that he is working as Inspector in the office of Sub Registrar Cooperative

Society. In his defence he stated that he was never assigned the work of issuance of permit by the Society and at the relevant time it was being done by Shri BL Sonkar. The accused examined three witnesses in his defence.

7. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as described above.

8. Counsel for the appellant submits that-

(i) as per Ex.P/8 work distribution memo and Ex.P/10A work distribution order issued by the office of Sub Registrar, Cooperative Societies, Raipur, the accused/appellant was never authorized to issue permit in favour of any society. As per Ex.P/8 dated 3.9.1985 the work of issuance of permit was under one Shri JP Mishra, Sub Auditor. Thereafter, as per Ex.P/10A new work distribution order was issued by the Sub Registrar on 24.10.1985 according to which also the work of issuance of permit is given to Ku. Mamta Bajpai and Shri BL Sonkar. As per Ex.D/3, work distribution order, the accused/appellant was assigned the work of maintaining the Legislative Assembly questions and 20 points programme whereas the work of issuance of permit is under the supervision of Shri AR Kalar, BR Chauhan and BL Sonkar. Thus, the appellant was never in-charge of issuance of permit in favour of any society and as such, the allegation leveled against him is baseless.

(ii) BL Sonkar (DW-2) in para-6 has admitted that the permit issued by their office remains with him and the concerned person would take permit from him. As per work distribution memo also it is DW-2 BL Sonkar who is authorized to issue permit.

(iii) As per Ex.P/1 the complainant Aniruddha Singh stated that the accused/appellant was demanding Rs.400/- for two months @ Rs.200/- per month for issuance of permit. However, according to the complainant, prior to this complaint permit was issued but since the signature was not matching, the permit was cancelled and new permit was issued in favour of the complainant.

(iv) The complainant (PW-1) in para-3 of his deposition has stated that due to irregularity in the society permit was not issued in favour of the society. In para-7 he also admitted that from 1982 to 1985 no audit of the society was done. In para-12 he has also admitted that during inspection of the society Shri Batti had also noticed certain irregularities in the society which were mentioned in his inspection report and copy of the said report was also given to the society.

(v) Since the accused/appellant was pointing out the irregularities being committed in the society of the complainant, he has been falsely implicated in this case whereas the appellant was never assigned the work of issuance of permit or renewal of permit issued to the societies.

(vi) While conducting trap proceedings, the prescribed procedure has not been followed by the police and the accused/appellant was forcibly taken to GRP Police Station by the trap team while he was at the railway station for going to Durg.

(vii) Most importantly, the charges were framed against the appellant under the Prevention of Corruption Act, 1988 but the alleged incident took place on 6th November, 1985 when the old Act i.e. Prevention of Corruption Act, 1947 was in force. As per new Act of 1988, the Act of 1947 and the Criminal Law Amendment Act, 1952 were repealed by Section 30 of the new Act. Therefore, no any charge is framed against the accused/appellant under the old Act. Though initially charges were framed against the accused under the old Act but later the same were altered by the trial Court as per new Act. Therefore, the entire trial proceedings stand vitiated and the accused is entitled for acquittal. Reliance has been placed on the decision of this Court in the matter of ***Arun Kumar Pandey Vs. State of MP, 2011(1) CGLJ 99***.

9. On the other hand supporting the impugned, counsel for the State submits that the demand and acceptance has been duly proved by the prosecution and the trial Court after due appreciation of the entire evidence has rightly convicted and sentenced the appellant, which warrants no interference by this Court.

10. Heard counsel for the parties and perused the material available on record including the impugned judgment.

11. It is not disputed by the prosecution that as per Ex.P/8, Ex.P/10A and Ex.D/3, which relate to work distribution among the employees/officers of the office of Sub Registrar, Cooperative Societies, Raipur, the accused/appellant was never authorized or assigned the work to issue permit in favour of any society and it

was under the supervision of BL Sonkar (DW-2). BL Sonkar (DW-2) has also admitted that the permit issued by their office remains with him and the concerned person would take permit from him. Though the complainant (PW-1 Aniruddha Singh) has stated that the accused had control over the entire affairs of the office but as per work distribution memos/orders, it is apparent that the accused is one of the officers posted in the society and each of the officers/employees had their respective assignment/work. Therefore, it is not proved by the prosecution that it is the appellant who was governing the entire affairs of the Society or had control over the whole of the office. The complainant has also admitted in para-7 of his deposition that on the date of 4th permit was given by Sonkar. This fact further shows that Sonkar, who is DW-2, is the authority to issue permit in favour of any society.

12. As per admission of the complainant himself PW-1 Aniruddha Singh Thakur in paras 7, 11 & 12, permit was not being issued in favour of his society on account of there being certain irregularities as pointed out by the appellant and also found during inspection by Shri Batti (PW-6) and that no audit of the society was got done by the complainant from the year 1982 to 1985. The appellant was assigned the work of renewal of the society and due to his pointing out certain irregularities in the society of the complainant, it may be a reason to falsely implicate him in this offence. It is also admitted by the complainant that prior to this incident, one permit was issued by Sonkar (DW-2) and not by the accused.

13. Nandlal (PW-5) in para-3 of his deposition has stated that he is working as salesman in the Control Shop of the complainant. He states that for obtaining permit for sugar he went to Mr. Sonkar who asked him to contact the accused and when he went to the accused for sugar permit, the accused refused to issue such permit and asked him to send the Secretary (the complainant herein) and also demanded money from him. As observed above, from the entire evidence of the prosecution, it is clear that accused was not authorized to issue any permit or put his signature on permit to be issued in favour of any society and it is BL Sonkar (DW-2) who is authorized to issue such permit. BL Sonkar (DW-2) has denied this fact that he ever asked Nandlal to contact the appellant. Furthermore, Nandlal (PW-5) has not stated in his case diary statement Ex.D/1 that the accused/appellant was demanding money in lieu of issuance of permit. Thus, in the facts and circumstances of the case, the evidence of Nandlal does not appear trustworthy.

14. Ram Bihari Batti (PW-6), Dy. Director, has stated that on 4.11.1985 Aniruddha Singh came to his office and complained that he has not received permit till date in favour of his society. When signature of the person authorized by the society was compared with the signature of Nandlal in the register, it was found that both the signatures were different and permit is issued after due verification of the signatures of the authorized person. Therefore, the permit which was earlier issued was cancelled and new permit was issued after proper verification of the signature. In para-12 this witness states that on 4.11.1985 the

accused was having charge of general department and Shri BL Sonkar was the person authorized to issue permit which was signed by him being Sub Registrar.

15. Thus, in view of the above oral and documentary evidence available on record, it becomes clear that the appellant was neither authorized to issue permit in favour of any society nor was authorized to cancel the same. As such, the prosecution has utterly failed to prove that there was any demand on the part of the accused/appellant from the complainant for issuance of permit.

16. Furthermore, from the evidence on record it is seen that the trap proceedings were conducted at Platform No.1 of Raipur Railway Station and thereafter further proceedings were conducted in GRP Police Station and not at the spot i.e. platform where the tainted notes were allegedly seized from the accused. According to PW-1 Aniruddha Singh when the money was seized from the pocket of the appellant, he was not present at that time. Though the appellant has admitted in his statement under Section 313 of CrPC that when his hands were dipped in the solution its colour turned pink; notes and his clothes were seized from him; on it being dipped into the solution, its colour turned pink and that he is working as Inspector in the office of Sub Registrar Cooperative Society but in his defence he has categorically stated that he has been falsely implicated in this case, he was never assigned the work of issuance of permit by the Society and at the relevant time it was being done by Shri BL

Sonkar. The said defence of the appellant gets support from the oral as well as documentary evidence available on record as discussed above.

17. Apart from the merits of the case, one important thing that is to be seen is that the charges were framed against the appellant under the Prevention of Corruption Act, 1988 but the alleged incident occurred on 6th November, 1985 when the old Act i.e. Prevention of Corruption Act, 1947 was in force. Though initially charges were framed against the accused under the old Act but later the same were altered by the trial Court as per new Act.

18. In the matter of ***Arun Kumar Pandey*** (supra) also the offence was committed prior to coming into force of the Act of 1988 but the accused was convicted under Sections 7 and 13(1)(d) the Act of 1988. Therefore, this Court referring to various judgments of the Hon'ble Supreme Court held that it is opposed to Article 20(1) of the Constitution particularly when the accused was prejudiced by such conviction because under Section 7 while enhancing period of punishment to five years offender shall be compulsorily imprisoned for a period of not less than six months which was not there either under Section 5 of the old Act or under Section 161 of IPC. In the said case, it was held as under:

> **"Prevention of Corruption Act, 1947, Ss. 5(1)(d) & 5(2), Penal Code, 1860, S. 161, Prevention of Corruption Act, 1988, Ss. 7 & 13(1)(d) r/w 13(2) and Constitution of India, Art. 20(1) – Old law**

> **applicable – It is alleged that on 15-1-1988 the appellant Labour Inspector demanded Rs.500/- from PW 4 Suresh Prasad Tiwari incharge of Pratap Travels – Appellant was convicted by the trial Court u/s 7 of the Act of 1988 – Art. 20(1) of the Constitution provides for protection against *ex post facto* law which says that no person is to be convicted for an offence except for violating a law in force at the time of commission of the act charged as an offence - Act of 1988 came in force on 9-9-1988, therefore, by virtue of Clause (1) of Art. 20 of the Constitution of India, a person cannot be convicted under the provisions which were not in force at the time of commission of the offence – In view of this legal position the appellant could not have been convicted under the provisions of S. 7 of the Act of 1988 because the said provision was not in force at the relevant time – Therefore conviction and sentence against him u/s 7 of the Act 1988 cannot be sustained being opposed to Art. 20(1) of the Constitution."**

19. In the present case also, at the time of commission of the alleged offence, the Act of 1988 was not in force and the accused/appellant was tried and convicted under the Act of 1988. Hence the appellant was prejudiced and in view of the decision in *Arun Kumar Pandey* (supra), the entire trial stands vitiated.

20. Thus, considering the facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution as well as the manner in which the charges were framed against the accused/appellant and his conviction was recorded, this

Court is of the opinion that the conviction of the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 is not sustainable in law and liable to be set aside.

21. In the result, the appeal is allowed. The impugned judgment convicting and sentencing the appellant under Sections 7 and 13(2) of the Act of 1988 is hereby set aside.

Sd/
(Gautam Chourdiya)
Judge

Khan