

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1990 of 1998

- Durgadas, son of Gulab Chand Nag, aged 48 years, Junior Engineer In-charge, Madhya Pradesh Electricity Board, Gariyaband, District Raipur, M.P. (now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh), Office of Lokayukt, Raipur (C.G.)

---- Respondent

For Appellant : Shri Ram Kumar Tiwari, Advocate
For Respondent/State : Shri Raghvendra Verma, Govt. Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

22.08.2019

1. This appeal is directed against the judgment dated 28.08.1998 passed by the Second Additional Sessions Judge, Raipur in Special Criminal Case No. 13/88. By the impugned judgment, accused/appellant Durgadas has been convicted and sentenced in the following manner with a direction to run the sentences concurrently:

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 7 of the Prevention of Corruption Act, 1947	Rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment of three months
Under Section 13(2) of the Prevention of Corruption Act, 1947	Rigorous imprisonment for two years and to pay fine of Rs.2,000/-, in default of payment of fine, to further undergo rigorous imprisonment of three months

2. Brief facts of this case are that at the relevant point of time i.e. on 11.09.1986, the appellant/accused was posted as Junior Engineer in Electricity Board, Gariyaband. Complainant Maniram Verma (PW-4) applied for temporary electric connection for irrigation of his field vide receipt (Ex.-P/8) dated 09.09.1986

of Rs.300/- which was deposited for temporary electric connection. When PW-4 approached the appellant for the purpose of getting early electric connection, the appellant told him that if he (complainant) wanted to get the electric connection for irrigation of his field at the earliest, he would have to pay Rs.100/- to him (accused/appellant). On 10.09.1986, the complainant approached the Superintendent of Police, Lok Ayukt, Raipur for taking appropriate action against the accused/appellant and a written complaint dated 10.09.1986 (Ex.-P/5) was made before the Superintendent of Police, Lok Ayukt, Raipur, under whose authorization, PW-6 Makhan Lal Pandey, Inspector made arrangements to trap the appellant/accused. The complainant produced the currency note in the denomination of Rs.100/-, number of which was recorded in the preliminary inquest (Ex.-P/6) and after applying phenolphthalein powder on the said currency note, it was given to the Complainant with instruction not to touch the same and he was further instructed to take out the same only when the demand was made by the accused.

3. Complainant Maniram Verma (PW-4) approached the appellant/accused on 11.09.1986 with phenolphthalein powder applied currency note in his pocket, he met the appellant/accused in the office of appellant at Gariyaband and trap party was also present outside the office. When Complainant gave tainted note of Rs.100/- to the accused/appellant and came out from the office and gave indication by cleaning his mouth to trap party, immediately the trap party rushed to the appellant/accused and seized the 100/- rupee note from the accused/appellant which was kept under the file on the table of the accused vide Ex.-P/9. Thereafter, the trap party trapped the appellant/accused and proceeding of washing phenolphthalein containing articles, hands of complainant, appellant and the currency note, in solution of sodium carbonate was done and in each washing the colour of solution turned pink, which was preserved and sealed in the bottles. Currency note recovered was verified from the number noted in preliminary inquest. Numbered FIR (Ex.-P/16) was recorded in Police Station- Special Police Bhopal.

Preserved and seized articles were sent for FSL examination from where a report (Ex.-P/18) was received in which the test for presence of phenolphthalein was found positive.

4. After completion of investigation, sanction for prosecution was obtained against the accused/appellant vide Ex.-P/1 and charge-sheet was filed under Section 161 of Indian Penal Code and Sections 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 against him in the Court of Special Judge, Raipur. Thereafter, learned Second Additional Sessions Judge, Raipur framed charges against the accused/appellant under Sections 7 and Section 13 (2) of the Preventions of Corruption Act.

5. So as to hold the accused/appellant guilty, the prosecution examined 6 witnesses i.e. PW-1 Netram, PW-2 Lakhan Lal Bijora, PW-3 R.D. Sharma, PW-4 Maniram Verma, PW-5 R.P. Saluja and PW-6 Makhan Lal Pandey. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication and he has examined three defence witnesses i.e. DW-1 P.R. Patiye, DW-2 Pradeep Narayan Singh and DW-3 K.P. Tiwari in support of his case.

6. After appreciation of the evidence available on record, learned Second Additional Sessions Judge, Raipur convicted and sentenced the accused/appellant as mentioned above in para-1 of this judgment.

7. Learned counsel for the appellant submits that the complainant filed an application for obtaining temporary electric connection and the appellant had given test report form for submitting after filling up the same by authorized contractor for temporary connection and that test report is mandatory for providing temporary connection to the complainant. The appellant never demanded or received any illegal gratification from the complainant. Complainant is a leader of BJP, he approached the appellant for giving temporary connection without obtaining test

report from the contractor, therefore, the appellant declined to provide the connections to the complainant. Due to political connection and power, complainant wanted temporary electric connection without submitting test report, therefore, grievance of the appellant is that he has been falsely implicated by the complainant. Ex.-P/4 is the test report, which was submitted on 15.09.1986 in the office of M.P. Electricity Board, Gariyaband and that fact is proved by the complainant. Learned counsel for the appellant submits that on the date of incident i.e. 11.09.1986, the complainant forced the appellant to take money of Rs.100/- which was refused by the appellant saying that without test report, he is unable to give temporary connection in favour to the complainant. Meanwhile, some officers came and that amount of 100/- kept under the file on the table of the appellant was seized by the concerned authority. The appellant had never demanded any bribe and never taken advantage of his post in receiving illegal gratification. The complainant had submitted test report on 15.09.1986, thereafter temporary connection was provided to the complainant and only on 09.09.1986 application for temporary connection was submitted by the complainant and on 11.09.1986 he was trapped by vigilance department without any reason. Since no test report was submitted by Maniram Verma before electricity department at the relevant time, it stands proved that only to take revenge from the appellant, he has been falsely implicated in this case by the complainant by taking undue advantage of he being a political leader of BJP. It is presumed by the trap party that the appellant was demanding money for providing temporary connection in favour of the complainant. Counsel for the appellant also submit that the complainant, in his evidence in para-16, has admitted that for giving false evidence before the Court, he was punished by one Judge Markam and another case also for giving false statement is pending before the Additional Sessions Judge, therefore, looking to the entire evidence, it is clear that the appellant was doing his job by duly complying with the procedure of his department for supplying the electric connection to the complainant who was required to submit test report as per mandatory proviso. Therefore, the trial Court

was not justified in not considering the entire evidence in its true perspective and wrongly convicted the appellant.

8. Learned counsel for the State submits that though the complainant has admitted that he was punished for giving false evidence once and another case is also pending against the complainant, but the benefit of it cannot be given to the accused/appellant in this case. As per FSL report, presence of phenolphthalein was found positive. It may be that a test report is mandatory for giving temporary electric connection, but the accused illegally demanded 100/- rupee for early electric connection and complainant handed over amount of Rs.100/- to the appellant which was accepted by him. Therefore, looking to the entire evidence, trial Court has rightly convicted the appellant which needs no interference by this Court.

9. Heard learned counsel for the parties at length and also perused the records of Special Criminal Case No. 13/88. The Second Additional Sessions Judge, Raipur, after appreciation of the entire evidence available on record, held that the accused/appellant had demanded illegal gratification of Rs.100/- from complainant Maniram Verma (PW-4) for providing early electric connection in his field and received the same.

10. PW-1 Netram is the office peon of Lok Ayukt, who applied phenolphthalein powder on 100/- rupee note and handed over the same to the complainant as per direction of their officer.

11. PW-2 Lakhanlal Bijora is the retired Chief Engineer of M.P. Electricity Board, who sanctioned for prosecution against the appellant/accused, being a public servant working as Junior Engineer in Gariyaband Office. It is proved by PW-2 that sanctioned was granted in accordance with law.

12. PW-3 R.D. Sharma proved the document Ex.-P/2 receipt issued by M.P. Electricity Board in favour of Maniram, who deposited Rs.300/- for temporary electric connection.

13. It is not disputed by learned counsel for the parties that the appellant is Junior Engineer working in Electricity Department, Gariyaband and on 09.09.1986

test report form is provided by Junior Engineer vide Ex.-P/4 which is mandatory for giving temporary connection. On 10.09.1986 test report was prepared by Parmar Electrical Works as per endorsement made by authorized contractor in Ex.-P/4 and it also bears the certification by the wireman. The place where the temporary connection is required is Nahargaon, as per Ex.-P/4, contractor belongs to Raipur and test report is prepared on 10.09.1986. Thereafter, test report was submitted on 15.09.1986 which is evident from endorsement made on Ex.-P/4 and that fact is proved by DW-1 P.R. Patiye. Therefore, it is not disputed that on 09.09.1986 the application was submitted for temporary connection of electricity, on 10.09.1986 certificate prepared by authorized contractor, Raipur and test report is submitted on 15.09.1986. According to the test report submitted on 15.09.1986, it was not possible for the appellant to give temporary connection to the complainant before date of submission of test report.

14. As per Ex.-P/3, a direction was given by Divisional Engineer (O&M), M.P. Elec. Board, Mahasamund to Junior Engineer, M.P. Electricity Board, Gariyaband regarding sanction of temporary connection that the supply may be given after ensuring that the work has been done by licensed contractor as per I.E. Rule. When temporary connection is given for power it is necessary to check the line laid by the applicant is as per I.E. Rules and will get proper voltage. Therefore, test report of contractor is required for giving temporary connection which is mandatory.

15. As per Ex.-P/4, test report was prepared on 10.09.1986 by contractor at Raipur, which was verified by wireman and submitted on 15.09.1986, therefore, without any test report, it was not possible to provide temporary connection in favour of the complainant. In para-17 of evidence of complainant (PW-4), he already admitted that he was informed by concerned clerk of M.P. Electricity Department, Gariyaband that test report is mandatory for giving temporary connection and on 11.09.1986, complainant had not submitted test report. PW-4 has also admitted in para-15 of his statement that the accused had never asked him on 11.09.1986 to pay 100/- rupee, only then the electric connection will be

provided at the earliest.

16. As per the statement of DW-1 P.R. Patiye, he has stated that on 09.09.1986, he gave test report form to the complainant. When Complainant requested for early connection, the accused said the complainant that you first prepare test report through authorized contractor, then you will get connection. At that time, complainant was saying that I am a leader of BJP, I do not know about test report etc and the complainant threatened the accused saying that I will see you. DW-1 also stated that on the said date i.e. 11.09.1986, he saw that the complainant threw the note on the table of the appellant and the appellant took the said note and returned the same to the complainant. Thereafter, the appellant said that he cannot give electric connection until the test report is submitted by the complainant.

17. As per the statement of DW-2 Pradeep Narayan Singh, he has stated that the test report is mandatory for electric connection. The test report was only given by the authorized contractor and no other person can give test report nor the appellant is authorized to give the test report or the officers of the electric department. He stated that the test report was submitted before Junior Engineer on 15.09.1986. The accused/appellant has also accepted this fact that the complainant was forcing him to take 100/- rupee and accused was refusing to take money and said that without giving test report, the electric connection would not be given to the complainant. After submitting test report on 15.09.1986, temporary electric connection was given to the complainant.

18. Looking to the entire evidence available on record, time gap between the making of application by the complainant on 09.09.1986 for temporary electric connection and filing of complaint on 10.09.1986 before Lok Ayukt, Raipur, the appellant's defence appears to be probable and therefore, the impugned judgment of the trial Court convicting the appellant for the offences under the aforementioned Sections is not sustainable.

19. In ***Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108***, the Hon'ble Supreme Court has observed that "*Whenever a prosecution witness turns hostile,*

his testimony cannot be discarded altogether. However, in instant case, from the material on record, it is amply clear that the complainant Jai Bhagwan turned hostile on two important aspects, namely, demand and acceptance of bribe by the appellant which is sine qua non for constituting the alleged offence under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act.”

20. It is well-settled position of law that the demand for the bribe money is *sine qua non* to convict the accused for the offences punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act. The same legal principle has been held by the Hon'ble Supreme Court in matters of **B.Jayaraj Vs. State of A.P., (2014) 13 SCC 55** and **P. Satyanarayana Murthy Vs. State of A.P. (2015) 10 SCC 152**.

21. The relevant para-7 from *B. Jayaraj* case (supra) which reads as under:

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in **C.M. Sharma Vs. State of A.P., (2010) 15 SCC 1**.”

22. In *P. Satyanarayana Murthy* case (supra), it was held by the Hon'ble Supreme Court in paras 21-23 which reads as under:

“21. In *State of Kerala v. C.P. Rao, (2011) 6 SCC 450*, this Court, reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in the 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.

22. In recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has

been underlined in *B. Jayaraj* (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13 (1) (d) (i) & (ii) of the Act. It has been propounded 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. The proof of demand, thus, has been held to be an indispensable essentially and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13 (1) (d) (i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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 the 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 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 Section 7 or 13 of the Act would not entail his conviction thereunder.”

23. After a careful reading of the evidence of the complainant Maniram Verma (PW-4) as per his statement in paras- 15, 16 & 17, the statement made by the appellant in his examination under Section 313 Cr.P.C. as well as the evidence of DW-1 P.R. Patiye and DW-2 Pradeep Narayan Singh, it is clear that there was no demand or receipt of bribe by the appellant from the complainant Maniram Verma

(PW-4). The prosecution has failed to prove beyond all reasonable doubt the charge levelled against the appellant. The decisions of the Hon'ble Supreme Court referred to supra and the ratio of law laid down in the above cases, squarely applicable to the fact situation on hand and therefore, this Court has to grant the relief to the appellant by allowing this appeal.

24. For the foregoing reasons and discussions, the appeal is allowed. Since the charges against the appellant are not proved, the conviction and sentences imposed upon the accused/appellant by the trial Court under Sections 7 and 13(2) of the Prevention of Corruption Act, 1947 are set aside and he is acquitted of the said charges.

25. It is also stated that the accused/appellant is on bail since 11.09.1998, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge