

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2786 of 1998

Judgement reserved on 18.07.2019

Judgement delivered on 12.12.2019

Dayaram S/o. Sitaram Maheshwar, Aged 45 years, then Revenue Sub Inspector, Nagarpalika Mahasamund, District Raipur (MP) (now Chhattisgarh) **---- Appellant**

Versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant : Ms. Seema Singh, on behalf of
Mr. Prabhakar Singh Chandel, Advocate.
For Respondent : Mr. Himanshu Sharma, and
Mr. Ishan Verma Panel Lawyers

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 18.11.1998 passed by the Special Judge, Raipur in Special Case No. 1 of 1994, whereby the accused/appellant has been convicted under Section 7 and 13(1) (d) read with section 13(2) of the Prevention of Corruption Act 1988 and sentenced him to undergo R.I. for one year and to pay a fine of Rs. 1000/- under Section 7 of the Prevention of Corruption Act and

R.I. for one year and to pay a fine of Rs. 1000/- under Section 13(1) (d) read with section 13(2) of the Prevention of Corruption Act with default stipulation.

2. Facts of the case in short are that the appellant was posted as Revenue Inspector at Municipal Council, Mahasamund from 1986 to 06.03.1991. Complainant Gokul Prasad Sahu was the contractor and had taken a contract for collection of toll tax of Shitli Naka to the tune of Rs. 1,62,200/-. In May 1989 the toll tax was increased from 30 paise to 50 paise for which an agreement was to be executed between the complainant and Nagar Palika, Mahasamund but as no agreement could be executed between them in time, the contract was terminated on 07.10.1989. On 28.11.1989, a notice was issued to the complainant for recovery of balance amount of Rs. 29,505/- whereas according to the complainant, no such recovery was due on him. On 25.02.1991 the complainant submitted an application for setting aside the recovery order against him. However, in the meanwhile the appellant being the Revenue Inspector posted at the said Municipal council demanded Rs. 1000/- as bribe from the complainant for getting the recovery matter settled. The complainant first gave Rs. 700/- as bribe to the appellant and for the balance amount he sought some time for him. Since the complainant did not want to give bribe, he complained the matter vide Ex.P-2 to Superintendent of Police, Special Police Establishment, Lokayukta, Raipur. On 06.03.1991 a trap was arranged, a trap team was constituted. 2

currency notes of Rs. 100/- denomination and 2 of Rs. 50/- denomination given by the complainant to the trap team which in turn gave back the same to him after coating phenolphthalein powder in the same vide Ex.P-3. Necessary instructions as to in what manner he was to hand over the amount to the accused were issued to the complainant by the trap team. The trap team proceeded for the spot, by standing some steps back, it asked the complainant to go and hand over the money to the accused and while doing this he was also asked to give signal to the trap party. When the complainant gave signal by scratching his head, the trap party went to the accused/appellant, caught him red handed while accepting the money from the complainant, got his hands washed in the sodium carbonate solution colour of which turned pink. Thereafter, FIR (Ex.P-15) was recorded and currency notes were seized from the appellant under Ex.P-10. Necessary sanction for prosecution of the accused was obtained vide Ex.P-13 from the competent authority. On completion of the investigation, the charge-sheet was filed against him for offence punishable under Sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act followed by framing of charge accordingly.

3. In order to prove its case the prosecution has examined 8 witnesses in support of its case. Statements of the accused was recorded under Section 313 of the Code of Criminal Procedure in which she denied her guilt and pleaded innocence and false implication in the case.

4. Learned counsel appearing for the appellant submits that the judgment impugned convicting the accused/appellant under the Prevention of Corruption Act is incorrect, improper and illegal. She submits that the evidence brought on record by the prosecution as regards the demand of bribe is inconsistent and uncorroborated and there is no evidence on record to establish that the appellant had demanded any amount as illegal gratification. She submits that no sanction to prosecute the appellant as dealt under Section 19 of the Act has been obtained and that the sanction brought on record was given in a mechanical manner which it does not fulfill the requirement as prescribed in Section 19 of the Act. She further submits that demand and acceptance of illegal gratification have to be proved beyond reasonable doubt and under the circumstances, the appellant deserves to be acquitted.

5. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. I have heard counsel for the parties and perused the material on record.

7. Gokul Prashad Sahu (PW-2) is the complainant of the case. He deposed that he had taken contract of toll tax to the tune of Rs. 1,62,200/- from Nagar Palik, Mahasamund. 30 paisa was charged to per passengers subsequently the charge was increased from 30 paisa to 50 paisa. The agreement was to be executed between them

regarding increasing of toll tax. As no agreement was executed between them in time, the contract was terminated on 07.10.1989. Thereafter on 28.11.1989, a notice was issued to him for recovery of balance amount of Rs. 29,505/-. He deposed that as per his knowledge, no dues was pending against him and on 25.02.1991 he moved an application for setting aside the recovery order. The appellant came and demanded Rs. 1000/- as illegal gratification other than his legal remuneration for setting aside the recovery. He stated that he paid Rs. 700/- cash to the appellant but the appellant did not issue any receipt to him and for remaining amount of Rs. 300/- he sought time from the appellant. Complainant did not want to give him bribe amount that is why he reported the matter to Superintendent of Police, Special Police Establishment, Lokayukt, Raipur as per written complaint (Ex.P-2) and this witness proved the said complaint. He further deposed that Police, Special Police Establishment, Lokayukt, Raipur has organized a trap proceedings. He further stated that he gave 2 notes of Rs. 100/- denomination and 2 notes of Rs. 50/- denomination were smeared with phenolphthalein powder under Ex.P-3 and kept the same in upper pocket of his shirt. Necessary instructions were given to the Complainant. A demonstration of trap was also given to him. After making complete preparation of the trap, the complainant and the trap team went to the shop of the complainant. At about 5-6 PM the appellant came to the shop of the complainant for taking remaining amount then the trap

party caught red handed to the appellant under Ex.P-4 and currency notes were seized from him vide Ex.P-10. His hands were washed in the solution of sodium carbonate. Numbers of the recovered currency notes were compared with the numbers already noted in the preliminary panchnama Ex.P-3. Colour of the solution turned pink. Statement of Gokul Prashad Sahu is supported by the statement of Ishwarlal (PW-1), Purushottam Prashad Raghuvanshi (PW-4) and Ramakant (PW-7). All the witnesses have supported the statement of the complainant regarding demand and receive of currency notes. Purushottam Prashad Raghuvanshi (DW-4) deposed that DSP and Tiwari came there and they caught the hands of the accused/appellant thereafter the complainant stated that the accused/appellant has taken bribe from him.

8. Having thus seen the material collected by the prosecution and the evidence on record including the statement of the complainant, it is apparent that after receiving notice from the Municipal Council for recovery of Rs. 29,505/- in the wake of enhanced amount of toll tax by 20 paisa, the accused/appellant being the Revenue Sub Inspector in the said Municipal Council approached him and assured of getting the matter set right at his own level but for the purpose he demanded Rs. 1000/- from him. Initially the complainant gave him Rs. 700/- and the rest of the amount was told to be paid later. However, before giving him Rs. 300/-, the complainant reported the matter to the Lokayukta,

Raipur and ultimately the trap was laid. It has also come in the evidence on record that after taking two currency notes of 100 denomination and 2 of Rs 50 denomination, the trap party smeared the same with phenolphthalein powder and then returned it to the complainant for being given to the accused whenever demanded. After receiving the signal of the complainant while handing over the amount to the accused the trap party also went there and caught the accused taking the amount from the complainant. Sodium Carbonate Solution in which the hands of the accused were washed hand turned pink and subsequently the seizure of the currency was made under Ex.P-3 and the FIR was reduced to writing. It is relevant to note here that all these things were done after obtaining requisite permission from the competent authority Ex.P.-13. Even the members of the trap team have duly supported the acceptance of the amount from the accused/appellant being PW-1, PW-4, PW-7 and PW-8. Further more FSL Report Ex.P-17 is also positive.

9. Thus the prosecution has fully proved the demand of bribe made by the accused/appellant for Rs. 1000/- and he was caught red handed while accepting the second installment of the amount being Rs. 300/-. The acceptance part has also been proved by PW-1, PW-4, PW-7 and PW-8 and thus, the prosecution has succeeded in proving its case beyond all reasonable doubt and so also the Court below too has been strictly adherent to the material collected by the prosecution and the evidence of the witnesses. No

rebuttal has been made by the accused/appellant which could convince the judicial mind of this Court to take a different view to the one taken by the Court below warranting any interference with the judgment impugned.

10. Accordingly, the appeal is totally substance less and being so it is hereby dismissed and the judgment impugned is hereby maintained.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Jyotiahi/ Santosh