

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 474 of 2005

Judgement reserved on 21.06.2019

Judgement delivered on 12.12.2019

Inder Kumar Sahu S/o. Late Shri Shobha Ram Sahu, Occupation Teacher, Primary School Nahardih, Thana Magarload, Tahsil Kurud, Distict Dhamtari (C.G.)

---- Applicant

Versus

1. Awadh Ram Dhruv S/o. Khelawan Ram Dhruv, Aged about 48 years, Principal Govt Higher Secondary School, Bhendri, District Dhamtari (C.G.)
2. Ajay Kumar Yadav S/o. Late Pheru Ram Yadav, Aged 33 years, Assistant Grade-II, Govt. Higher Secondary School Bhendri, District Dhamtari (C.G.)
3. State of Chhattisgarh, through Special Police Establishment Lokayukt Office, Raipur District Raipur (C.G.)

---- Respondents

with

Acquittal Appeal No. 11 of 2016

State of Chhattisgarh through Station House Officer, P.S. Lokayukt Unit at Raipur Distirct Raipur (C.G.)

-----Appellant

Versus

1. Avadhram Dhruw S/o. Khilavanram Dhruw, aged about 48 years, Principal, Higher Secondary School Bhendari, District Dhamtari (C.G.)

2. Ajay Kumar Yadav, S/o. Late Feruram Yadav, Aged about 33 years, Assistant Grade-II, Higher Secondary School Bendhari, District Dhamtari (C.G.)

-----**Respondents**

For the Applicant	: Ms. Aparajita Gaikward, Advocate
For the Respondent No. 1 and 2	: Mr. Aman Kesharwani
For the Respondent No.3	: Mr. Raghvendra Verma, GA
For the Respondent No. 1 and 2 in Acqa. Appeal No. 11 of 2016	: Mr. Raja Sharma, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor
CAV Order

1. This revision is filed under Section 397/ 401 of Code of Criminal Procedure, 1973 against the judgment dated 01.09.2004 passed by Special Judge of Prevention of Corruption Act, Raipur in Special Case No. 5/2001; whereby the respondents are acquitted by the Court below of the charges under Sections Sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act.
2. Facts of the case, in short, are that accused/respondent No.1 Awadh Ram Dhruv was posted as Principal in Govt Higher Secondary School, Bhendri, respondent No.2 Ajay Kumar Yadav was posted as Assistant Grade-II and complainant Indraman Kumar Sahu was also posted as Assistant Teacher in the same school. It is stated that the complainant had applied for withdrawal of part final payment from his GPF account and the papers of which was

pending before the respondents. The complainant met the respondents several times in the office. However, on some pretext or the other, the amount was not sanctioned to him. Eventually a demand of Rs. 1500/- was made by the respondents. Since the complainant was not willing to offer the bribe, a written complaint was made by him on 15.05.2000 to the Special Police Establishment, Lokayukta at Raipur. For verification of the said complaint, the police provided a tape recorder to the complainant for recording the conversation in respect of demand of illegal gratification. The complainant for recording the conversation in tape he called the respondent No. 2 and settled the matter in Rs. 1100/- and first gave Rs. 500/- to respondent No.2 and for the remaining amount of Rs. 600/- he sought time. On 19.05.2000 he called the respondent No. 2 and sent the message about the same to SDOP Lokayukta. On 19.05.2000 panch witnesses were arranged and a trap team was constituted. 6 notes of Rs. 100/- denomination were smeared with phenolphthalein powder. The trap team proceeded for the spot, by standing some steps back at treasure office at Dhamtari, it was asked the complainant to go and hand over the money to the respondents 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 respondent No.1 Awadhram, caught them red handed while accepting the money from the complainant, got his hands washed in the sodium carbonate solution colour of which turned pink and the respondent No.2 was present along with respondent

No.1. They were arrested under Ex.P-29 and thereafter, FIR (Ex.P-27) was recorded and currency notes were seized from the respondents under Ex.P-21. Necessary sanction for prosecution of the respondents was obtained vide Ex.P-26 from the competent authority. On completion of the investigation, the charge-sheet was filed against the respondents 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. Learned Counsel appearing for the Appellant argued that the prosecution has not proved the factum of demand and acceptance of bribe against the appellant. As per the court statement of the complainant, earlier the respondents had demanded Rs. 1500/- but later on, they made a demand of Rs. 1100/-. What was the actual demand is not proved by the prosecution. She submits that in this case the evidence of the prosecution has proved the fact beyond all reasonable doubts and the learned Special Judge on the basis of minor contradictions/omissions discarded the whole evidence and recorded acquittal in favour of the accused/ respondent No. 1 and 2 which is against the principles of law and is liable to be set aside.
4. On the other hand, learned counsel for the respondents No. 1 to 2/accused in acquittal appeal No. 11 of 2016 contended that there is no illegality in conclusion arrived at by the trial court and the revision is liable to be dismissed.

5. I have heard Learned Counsel appearing for the parties and in order to appreciate the evidence available on record I have carefully gone through the same.
6. The first question for consideration before this Court is whether the accused/ respondents demanded illegal gratification from the complainant. With regard to demand, case of the prosecution is based on sole testimony of complainant Inderman Kumar Sahu (PW-3) according to whom, the accused/ respondent No.2 had demanded Rs. 1500/- and thereafter he has stated that the demand made was for Rs. 1100/-. This ambiguity in the demanded amount also create doubt to the case of the prosecution. Secondly, the tape recorder so provided to the complainant for recording the transaction deal also does not contain the version concerning the demand made by the respondent/accused No.2. As for as acceptance part of the bribe amount is concerned, according to the complainant, the money was paid to respondent/accused No.1 the Principal of the School, though no demand whatsoever was made by him rather it was made by respondent No.2. Thus, the demand of illegal gratification and the acceptance thereof by the respondent/accused has not been proved in accordance with law. It appears to be a case where the demand is said to be made by one and the illegal gratification was made to the other which makes the case of prosecution absolutely doubtful. The case of prosecution has not even been supported by the other independent witnesses as there are numbers of contradictions and omission in their testimony. Even the complainant has not been consistent in

making the picture clear. The place appointed for making the payment of illegal gratification being a busy place also render the case of the prosecution doubtful because such public places are normally not chosen for such transactional deals.

7. The learned trial court while appreciating the evidence of the complainant and other witnesses found that the statements of the witnesses are full of contradictions and omissions on material particulars. Therefore, after critical evaluation of the evidence on record, it has been concluded by the Special court that the prosecution has not proved the charges by cogent and reliable evidence. Even the demand and acceptance of illegal gratification has not been proved to be made by the same person. Even the complainant has stated that the demand was made by the accused/respondent no.2 and the payment was made to respondent No.1 who are two different entities being the clerk and the principal respectively. Further, keeping in view the settled legal position that if the over all material gives rise to two possible and plausible views, the one beneficial to the accused/respondents has to be preferred and therefore also this Court is not inclined to interfere with the impugned judgment of acquittal.
8. Resultantly, the revision and acquittal appeal fail and are hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
 JUDGE