

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 7-11-2019
 Delivered on 17-12-2019

CRA No. 161 of 2019

- Sanjay Dubey S/o Satanand Dubey aged about 57 Years
 Assistant Food Officer, Rajnandgaon, R/o A-1,
 Kanchanganga Colony, D. D. Nagar, Raipur District Raipur
 Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through the Anti Corruption Bureau,
 Raipur District Raipur Chhattisgarh

---- Respondent

For Appellant	:	Mr. Sameer Oraon, Advocate
For respondent/State	:	Mr. Raghavendra verma, Govt. Adv.
For complainant	:	Mr. Aakash Yadu @ Mr. Rajat Agrawal, Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 18-1-2019 passed by the Special Judge (Prevention of Corruption Act, 1988), Rajnandgaon (CG) in Special Criminal Case No. 2 of 2017 wherein the said Court has convicted the appellant for commission of offence under Sections 7 & 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988") and sentenced

him to undergo rigorous imprisonment for four years and fine of Rs.25,000/- on each count respectively with default stipulations. Both sentences are directed to run concurrently.

2. The case of the prosecution, in brief, is that complainant namely Subhash Prasad Sao has made a complaint dated 27-8-2016 to the effect that the appellant/accused being in his capacity as Assistant Food Officer, Rajnandgaon has demanded Rs.1,40,000/- as illegal gratification for issuance of order of delivery of colourless kerosene. Kerosene was auctioned by the Food Branch, Collectorate, Rajnandgaon on 24-8-2016 to the tune of 20,000 liters. The nephew of the complainant namely Suraj Sao being the highest bidder is allowed for delivery of colourless kerosene. On receiving the complaint against the appellant by Anti Corruption Bureau, complainant has been provided digital voice recorder and after being satisfied with the complaint, the authorities arranged trap. The amount was seized from a four wheeler vehicle bearing registration No. CG-07-MA 9223 to the tune of Rs.1,40,000/-. It is alleged by the prosecution that complainant was sitting in the vehicle with appellant and the said amount was kept in the vehicle by the complainant as per demand of the appellant. The trap party headed by one Police Officer (D.S.P.) namely S.I. Khan (PW/17) recovered the amount from the vehicle and after completing formalities charge-sheet

was filed. After completion of trial, the trial Court convicted and sentenced him as aforementioned .

3. Learned counsel for the appellant would submit as under:

- i) There is no shadow witness account either for demand or acceptance of illegal gratification. The case of the prosecution is based on the bald statement of the complainant which is uncorroborated, therefore, demand and acceptance is not proved.
- ii As per version of PW/4 Devendra Kumar, Assistant Grade -III of Food Office (para 10) one H.L. Dhruv who was successor of the appellant has taken charge as Food Officer on 28-8-2016, therefore, appellant was not Incharge, Food Officer on the date of trap ie., 6-9-2016 and he had no role to play after relieving from charge on 28-8-2016.
- lii) The appellant has examined himself as DW/1 under Section 315 of the Code of Criminal Procedure, 1973 and as per his version, complainant was arrested in a case

under Section 3/7 of the Essential Commodities Act, 1955 and other various Sections of IPC in which appellant was complainant as per Annexure P/1 attached with Ex.D/1.

- iv) Complainant remained in jail for three months in that case and he has been granted bail by this court in Miscellaneous Criminal Case No. 1823 of 2015 as per Annexure P/5, therefore, he is highly prejudiced to the appellant and bore grudge against him and number of cases have been filed against him as per Annexures with Ex.D/3, therefore, depending on his evidence by the trial court is unsustainable
- v) As the amount is not seized from the person of the appellant and it is seized at the instance of the complainant, therefore, seizure of amount is not evidence of possession against the present appellant.
- vi) Exercise of phenolphthalein powder and

sodium carbonate solution is of no help to the prosecution because when hands of the appellants were washed it remained colourless.

vii) At the time of investigation appellant had clearly answered that he had no knowledge about any amount kept in the vehicle by the complainant, therefore, seizure of amount from the vehicle at the instance of complainant is his possession which is not accepted by the appellant and Section 20 of the Act, 1988 has no application in the present case.

viii) The trial court has overlooked the material aspect of the matter and recorded finding on bald statement of the complainant who is totally unreliable, therefore, finding of the trial court is liable to be set aside.

5. On the other hand, learned counsel for the State as well as learned counsel for complainant supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. The question for consideration of this court is whether the appellant demanded illegal gratification from the complainant and accepted the amount from the said complainant.

8. To substantiate the charge, prosecution examined as many as 17 witnesses and produced documents Ex.P/1 to Ex.P/42. To nullify the charge, defence side examined the appellant as DW/1 and produced documents Ex. D/1 to D/18.

9. R. Swarnakar, Asst. Engineer of Public Health Engineering Department (PW/1) deposed before the trial court that he was a member of trap party and the amount was recovered from a vehicle as mentioned above at the instance of the complainant Subhash Prasad Sao (para 3). He further deposed (para 25) that he has not heard any conversation between the complainant and the appellant. Suraj Kumar (PW/7) who participated in auction of kerosene, deposed before the trial court that the amount was seized from a vehicle (para 7). This witness has admitted (para 17) that when appellant was posted at Food Department of Raipur, he has filed a charge-sheet against him and complainant Subhash Prasad Sao (PW/3) which is still pending. He further deposed (para 18) that he and the complainant Subhash Prasad Sao filed a petition before this court against the said charge-sheet and both have filed the petition jointly. He has admitted (para 19)

that the appellant is also made party in the said petition. He has clearly admitted that due to filing of case against him and his brother-in-law, he is annoyed with the appellant. He further admitted that in relation to charge-sheet Ex.D/1, a truck was seized. This witness has clearly deposed that the appellant has never demanded any sum from him (para 31).

10. Lawrence Khes (PW/8) is not shadow witness regarding demand or acceptance of amount. Neelkant Sahu (PW/9) Asst. Grade-III and Constable Rampravesh Mishra (PW/10) are not witnesses regarding demand or acceptance.. Constable Shiv Sharan Sahu (PW/11) deposed that the amount was seized at the instance of the complainant from a vehicle (para 8 & 9). This witness is also not shadow witness regarding demand or acceptance. Yogesh Chandra Pandey (PW/13) who is Deputy Managing Director, District Forest Federation, Khairagarh deposed before the trial court (para 8) that the amount was seized from the vehicle at the instance of the complainant. S.I.Khan (PW/17), Deputy Superintendent of Police, Anti Corruption Bureau deposed before the trial court that the amount was seized from a vehicle at the instance of the complainant (para 13). He further deposed (para 15) that no amount was seized from the person of the appellant. This witness has admitted (para 14) that solution of sodium carbonate test on the fingers of the appellant was negative and remained colourless.

11. From the statement of Shivsharan Sahu (PW/11) who is a member of trap party (para 10), it is clear that when fingers of the appellant were dipped in solution of sodium carbonate it remained colourless. All the witnesses of trap party including Investigating Officer are not shadow witnesses either of demand or of acceptance. No one deposed before the trial court regarding any conversation between complainant and the appellant. No one deposed before the trial court regarding acceptance of amount by the appellant.

12. The case of the prosecution is based on the statement of the complainant Subhash Prasad Sao (PW/3) who deposed regarding demand by appellant. He deposed before the trial court (para 7) that he had gone to Food Office, Rajnandgaon on 2-9-2016 with one Suman Chhatterjee. Suman Chhatterjee (PW/16) deposed before the trial court that Subhash Prasad Sao asked him to sit in the car and he remained sitting in the car. This witness has not deposed anything as to whether any conversation took place between complainant and the appellant. As per version of Subhash Prasad Sao (PW/3) he directed his brother-in-law Suraj Kumar (PW/7) to participate in auction of kerosene and his bid was accepted. This witness has deposed before the trial court (para 20) that he kept the amount in a vehicle bearing registration No. CG-07 MA-9223 as per direction of the appellant, but there is no shadow witness regarding conversation of the complainant and

the appellant. This witness has deposed (para 15) that he recorded the voice of the appellant in a voice recorder. In the present case, it is done for satisfaction of Investigating Officer to proceed with the case.

13. There is no shadow witness in the case in hand and the case of the prosecution is entirely based on the bald statement of the complainant. Complainant Subhash Prasad Sao (PW/3) admitted that one criminal case is pending against him in the Court of Chief Judicial Magistrate, Raipur for commission of offence under Section 420 and 467 of the IPC, 1860 and Section 7 of the Essential Commodities Act, 1955, but this witness deposed that he had no knowledge that criminal case is filed by the appellant and he is the complainant in the said case (para 76). This witness further deposed that for the case pending as mentioned above, he has filed a petition before this court for quashing of the proceeding and he has made appellant as party by name in the said petition (para 77). This witness has made contradictory statement regarding criminal trial pending against him. If he had no knowledge that the appellant is the complainant in the said criminal case why he has made him party in his petition which shows that version of this witness is false on this count. This witness admitted (para 78) that he has filed Ex.D/1 in the petition filed before this court. On perusal of the Ex.D/1, it is clear that the appellant is complainant in the said charge-sheet. When

this witness is asked to see Ex.D/1 and reply as to whether appellant has filed the charge-sheet, this witness clearly stated that even after perusal of charge-sheet he cannot say that charge-sheet is filed by the appellant which shows guilty mind of the complainant and it further shows that he is prejudiced with the appellant because he has taken action against him and he suffered jail term. This witness has admitted that the case was related to Ex.D/1 of the year 2014-2015. As against this, appellant (DW/1) has clearly deposed (para 1) that he charge-sheeted the complainant Subhash Prasad Sao and he was arrested. Version of this witness is supported by document Ex.D/1 and again it is supported by document Annexure P/5 of Ex.D/1 which is an application for grant of bail filed before this court and Annexure P/4 is document of arrest of the complainant on 7-1-2015. As per Annexure with D/3, nine cases have been filed against complainant Subhash Prasad Sao from 7-11-1989 to 15-6-2009.

14. Now the point for consideration of this court is whether the appellant received illegal gratification as alleged by the complainant Subhash Prasad Sao (PW/3). There is no shadow witness regarding acceptance of amount by the appellant. There is no corroboration either from any witness or from chemical test that the appellant accepted the amount. Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see

but also overhear what happens and how it happens also. The corroboration is essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance but it is very much wanting in this case.

15. In the matter of **State of Kerala and others vs. C.P. Rao, reported in (2011) 6 SCC 450**, Hon'ble the Supreme Court has held that “when there was no corroboration of testimony of the complainant, it has to be accepted that evidence of the complainant cannot be relied on for demand of illegal gratification”. When there is no corroboration, acceptance of illegal gratification is not proved looking to the evidence adduced by the prosecution. Chemical test applied to the appellant is failed and the amount was not seized at his instance. The amount was seized at the instance of the complainant and such evidence cannot be used against the appellant for the purpose of acceptance and Section 20 of the Act has no application.

16. From the evidence of the complainant it is clear that the complainant is aggrieved with the appellant because he had earlier filed charge-sheet against him and the complainant suffered jail term and facing trial, therefore, he has strong motive to implicate the appellant in order to stall his future course of action against the appellant and he can do the business at his will without hindrance. He is prejudiced with appellant and can go up to any extent to implicate him.

17. In the matter of **Ganga Kumar Srivastava vs The State of Bihar, reported in (2005) 6 SCC 211**, Hon'ble the Supreme Court has held as under:

“24. Even otherwise, the defence of the accused was more probable and therefore it should be accepted. It was one of the defence of the appellant that because of starting a criminal case against the complainant, the trap case was initiated by the vigilance department at the instance of the complainant. It is not in dispute that a complaint at the instance of the appellant was made against the complainant”.

18. On an over-all assessment, defence version is more probable in the facts and circumstances of the case, therefore, finding recorded by the trial court is not sustainable. Accordingly, the appeal is allowed and conviction and sentence awarded to the appellant is set aside. He is acquitted of the charge under Section 7 and 13 (1)(d) read with Section 13(2) of the Act, 1988.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju