

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 207 of 1999

Judgement reserved on 05.09.2019

Judgement delivered on 19.12.2019

Shyamdhar Diwan S/o. Late Mohandhar Diwan, Chief Municipal Officer (Retired), Mahasamund presently residing at Shankar aNagar, Mahasamund District Mahasamund (C.G.)

---- **Appellant**

Versus

State of Madhya Pradesh through Special Police Establishment, Lokayukta Officer, Bhopal Unit, Raipur MP (now Chhattisgarh)

---- **Respondent**

For Appellant : Mr. Ram Kumar Tiwari, Advocate.
For Respondent : Mr. Ishan Verma Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.12.1998 passed by the Special Judge, Raipur in Special Case No. 02 of 1991, whereby the accused/appellant has been convicted under Sections 161 IPC and 5(1)(D) and 5(2) of the Prevention of Corruption Act and sentenced him to undergo R.I. for one year and to pay a fine of Rs. 1000/- under Section 161 IPC and R.I. for one year and to pay a fine of Rs.

1000/- under Section 5(1)(D) and 5(2) of the Prevention of Corruption Act with default stipulation.

2. Facts of the case in short are that complainant Mohan Lal Soni (PW-7)- resident of Mahamai Para, Ward No.2, Mahasamund applied to the concerned Municipal Council for a water connection for his newly constructed house vide application dated 07.10.1987 (Ex.P-7). It is alleged that on 17.12.1987 when he contacted the accused/appellant who at the relevant time was posted as Chief Municipal Officer, Mahasamund, in this connection, he demanded Rs. 200/- from him and asked to come with the same on 22.12.1987. Since the complainant did not want to fulfill the demand of the accused/appellant he met the contractor Shakil Lohani (PW-5) and solicited his cooperation for trapping the accused. On this, PW-5 met the Superintendent, Special Police Establishment, Lokayukta, Raipur (PW-8) and informed him about the demand made by the accused/appellant. On the instructions of the Superintendent, Special Police Establishment, Lokayukta, Raipur (PW-8) the witnesses to trap party reached the house of PW-5 where complainant got an application for trap prepared from Khemrao Banjari (PW-9) and submitted the same to the Special Police Establishment on 22.12.1987 vide Ex.P-1(A). Thereafter, complainant gave two currency notes of Rs. 100 denomination to the Superintendent, Special Police Establishment, Lokayukta, Raipur (PW-8) under the preliminary *Panchanama* who after applying phenolphthalein powder and demonstrating the test,

returned the same to the complainant to be given to the accused/appellant on demand made by him and with these instructions those currency notes were kept in the pocket of his shirt. Trap party then proceeded to the spot asking the complainant to first go to the accused/appellant, give the currency notes to him and then make a signal therefor, by putting his hands on his head. When complainant along with *Panch* witness H.H. Pal (not examined) went to the office of accused/appellant and told him about bringing the money with him, he (accused) asked him for giving the same to him saying “**Rupai de do**” on which the complainant took out the currency notes from his shirt pocket and gave the same to the accused/appellant who put the same in the files kept on the table and assured him of the work being done. Thereafter, H H Pal came out, gave signal to the trap party and eventually the trap party went to him and recovered the currency notes from his table. After dipping the hands of the accused/appellant as also the currency notes in the sodium carbonate solution, its colour turned pink. Hands of complainant were also got washed in the said solution and then also the colour of the same turned pink. However, the colour of the sodium carbonate solution did not change when the hands of H. H. Pal were washed in it, obviously because he had not touched those currency notes. The seizure of currency notes and register in which the notes were kept was made under Ex.P-4, they were sealed in the presence of witnesses and sent to Forensic Science Laboratory under Ex.P-15

along with the samples of sodium carbonate solution, from where positive report was received vide Ex.P-16. Sanction to prosecute the accused/appellant was obtained from the competent authority vide Ex.P-1. After completion of investigation charge sheet was filed against the accused/appellant under Sections 161 IPC and 5(1)(D) and 5(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. He submits that the Court below has not appreciated the evidence and document on record in accordance with the settled principle of law and has arrived at an abrupt finding holding the accused/appellant guilty under the Prevention of Corruption Act.

4. 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.

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

6. From the evidence of Yogendra Singh (PW-1) it is manifest that the prosecution of the accused/appellant was launched after obtaining sanction from the competent authority as required under the law. Anant Singh Thakur (PW-3) is the witness who prepared and forwarded the note sheet in respect of the application of the

complainant for water connection. R.N. Sharma (PW-4) is one of the members of the trap party has categorically stated that on the instructions of the Special Police Establishment, he proceeded to the office of accused/appellant and the two currency notes were seized from his table under Ex.P-4. He has also described as to the manner in which the trap party proceeded, the demonstration of the trap was made and ultimately on receiving signal from H.H. Pal the trap party entered his room and recovered the two currency notes coated with phenolphthalein powder. He has also stated that after dipping the fingers of accused/ appellant, the colour of sodium carbonate solution has turned pink. PW-6 is the witness who made inspection of the house of the complainant and gave certificate as to his ownership over the same. PW-8 is the witness under whose directions the trap team was constituted, chemical test was demonstrated and the trap was laid in the office of the accused/appellant where the complainant along with H.H. Pal went and gave the said amount on being demanded by him. From the evidence of this witness it is also apparent that as on that day adequate staff was not available, he himself had applied phenolphthalein powder on the currency notes to be given by the complainant to the accused/appellant. PW-9 is a daily wage employee of the concerned Municipal Council who has stated that he had drafted an application in connection with laying of trap on being asked by the complainant PW-7. He however, has refrained from making any further disclosure regarding the trap. PW-11 is the SDOP, who is the member of the trap team has categorically stated that the seizure of currency notes was made from the table of

accused/appellant and on his hands being washed in the sodium carbonate solution the colour of the same had turned pink and the number of those currency notes mentioned in the preliminary *Panchanama* were tallied with the ones submitted in the Court and found to be the same. Though, H.H. Pal who accompanied the complainant to the office of the accused/appellant has not been examined by the prosecution yet the evidence of the complainant makes it clear that when he first approached the appellant and requested him for providing him water connection, he made a demand of Rs. 200 but as he did not wish to give the same to him as bribe, he approached the Superintendent of Special Police Establishment along with PW-5 and ultimately the trap was laid. He has categorically stated that when the accused/ appellant told him to give the amount brought by him saying “**Rupai de do**” he handed over the same to him and after signal being given by H.H. Pal the trap party laid the trap and seized the currency notes from his own table. This version of the complainant gets due corroboration from PW-8 and PW-11. This apart, the report (Ex.P-16) received from the laboratory is also positive in respect of the articles sent to it for chemical examination under Ex.P-15.

7. No illegality or infirmity is thus noticeable by this Court in the findings recorded by the learned Court below convicting the accused/appellant under Sections 161 IPC and 5(1)(D) and 5(2) of the Prevention of Corruption Act as there is clear evidence of the witnesses including that of PW-7 that the accused/appellant being a public servant had demanded Rs. 200/- as illegal gratification and

accepted the same on being demanded by the accused appellant on the date on which the trap was laid.

8. Judgement impugned thus does not suffer from any legal flaw warranting any interference by this Court and being so it is hereby maintained, and the appeal being without any substance is liable to be and is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh