

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.795 of 2017**Judgment Reserved on : 25.9.2019Judgment Delivered on : 19.12.2019

Dr. Rajkumar Damle, S/o Late Maniram Damle, at present aged about 62 years, the then Assistant Surgeon, District Hospital, Durg, Chhattisgarh, at present Physician, District Hospital Gunderdehi, District Balod, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through Inspector, Anti Corruption Bureau, Raipur, Chhattisgarh

--- Respondent

 For Appellant : Shri Prafull N. Bharat, Advocate
 For Respondent : Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. JUDGMENT**

1. This appeal is directed against the judgment dated 9.5.2017 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act'), Durg in Special Case No.2 of 2006, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the Act	Rigorous Imprisonment for 2 years and fine of Rs.2,000/- with default stipulation

2. Case of the prosecution, in brief, is that on the relevant date and time, the Appellant was posted as an Assistant Surgeon in District Hospital, Durg. Acquitted accused Vinod Kumar Pandey was also posted there as an O.T. Attendant. Complainant Amar Singh (PW7), a resident of Bhilai, had brought Baisakhinbai to the District Hospital, Durg on 17.1.2005 for her treatment. The Appellant, after examination of Baisakhinbai, called her again on 7.2.2005 and demanded a sum of Rs.600/- from Complainant Amar Singh (PW7) for the purpose of operation of Baisakhinbai. On 7.2.2005, between 9:00 to 9:30 a.m., the Appellant performed surgery of abscess of Baisakhinbai. At that time, on being demanded by the Appellant, Amar Singh gave him a sum of Rs.200/-. The Appellant again called Amar Singh along with Baisakhinbai for her examination and for payment of the remaining amount. Amar Singh did not want to give him money and, therefore, he went to the office of Anti Corruption Bureau, Raipur and made a written complaint (Ex.P20) on 9.2.2005. Inspector Anil Pathak (PW10) prepared a trap plan. On 10.2.2005, in the morning, Complainant Amar Singh was called at the Rest House, Durg situated in front of the District Hospital, Durg. Panch Witnesses R.H. Pandey (PW4) and S.C. Khuntiya (PW5) were called by him and all of them went to the Rest House, Durg. At the Rest House, Complainant Amar Singh was introduced with the aforesaid panch witnesses and the panch witnesses were given complaint of Complainant Amar Singh for verification. Dehati Nalishi (Ex.P33) was recorded and on its basis, numbered First Information Report (Ex.P34) was registered. Complainant Amar Singh brought 4 currency notes each in the denomination of Rs.100/-. Their numbers were noted in Preliminary Panchnama (Ex.P10). Constable Agamram Verma

smeared phenolphthalein powder on those 4 currency notes submitted by Complainant Amar Singh and put those smeared currency notes in the pocket of the shirt worn by Complainant Amar Singh and he was also given a demonstration of trap proceeding. Constable Pawan Pathak prepared different solutions of sodium carbonate. Complainant Amar Singh was also given a tape recorder with a new cassette and battery. He was also demonstrated how to start the tape recorder and record conversation. Thereafter, on 10.2.2005 itself, at 9:45 a.m., Complainant Amar Singh was sent to the District Hospital, Durg with the bribe money. Members of the trap party hid nearby. Complainant Amar Singh entered the hospital and after return he gave a signal that he had given the bribe money to the Appellant. On this, the trap party entered the hospital and caught the Appellant. According to the prosecution, the Appellant was given the tainted bribe money of Rs.400/- out of which the Appellant had kept Rs.300/- with him in his apron and gave the remaining amount of Rs.100/- to acquitted accused Vinod Kumar Pandey, the O.T. Attendant. Vinod Kumar Pandey had kept that tainted note of Rs.100/- in the pocket of his shirt. Panch Witness S.C. Khuntiya (PW5) made a search of the Appellant and acquitted accused Vinod Kumar Pandey and took out 3 tainted currency notes each of Rs.100/- from the apron of the Appellant and 1 tainted currency note of Rs.100/- from the pocket of the shirt of acquitted accused Vinod Kumar Pandey. The numbers of the recovered 4 tainted currency notes were compared with the numbers already recorded in the Preliminary Panchnama (Ex.P10). The numbers matched. Hands of the Appellant and acquitted accused Vinod Kumar Pandey were washed in different solutions of sodium carbonate on

which colour of the solutions turned into pink. The recovered tainted currency notes, the apron of the Appellant and shirt of acquitted accused Vinod Kumar Pandey were dipped into different solutions of sodium carbonate on which colour of the solutions turned into pink. Vide Ex.P11, the 3 tainted currency notes of Rs.100/- and the apron of the Appellant were seized. Vide Ex.P12, the 1 currency note of Rs.100/- and the shirt of acquitted accused Vinod Kumar Pandey were seized. O.T. Register was also seized from acquitted accused Vinod Kumar Pandey vide Ex.P14. O.P.D. Register (Ex.P2) was also seized vide Ex.P1. Vide Ex.P15, O.P.D. Slip of Baisakhinbai was seized from Complainant Amar Singh (PW7). Service Books and posting orders of the Appellant and acquitted accused Vinod Kumar Pandey were also collected. All the used solutions of sodium carbonate were sent to the Forensic Science Laboratory for chemical examination. The FSL Report is positive. Necessary sanction for prosecution (Ex.P21) of the Appellant and acquitted accused Vinod Kumar Pandey was obtained from the competent authority. On completion of the investigation, a charge-sheet was filed against the Appellant and acquitted accused Vinod Kumar Pandey. Charges were framed against them.

3. In support of its case, the prosecution examined as many as 10 witnesses. Statements of the Appellant and acquitted accused Vinod Kumar Pandey were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt. No witness has been examined in their defence.
4. On completion of the trial, the Trial Court acquitted accused Vinod Kumar Pandey of the charges framed against him, but convicted

and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that without there being sufficient evidence available on record against the Appellant, the Trial Court has wrongly convicted him. On the same set of evidence, co-accused Vinod Kumar Pandey has already been acquitted, therefore, the Appellant is also entitled to be acquitted. He further submitted that the act of operating the abscess of Baisakhinbai for which it was alleged that the gratification was demanded was already satisfactorily performed on 7.2.2005, i.e., before the date of incident, i.e., 10.2.2005. Therefore, it is not established that any illegal gratification was demanded for treatment of Baisakhinbai. It was further submitted that as stated by Complainant Amar Singh, Baisakhinbai remained present along with Amar Singh during the whole period of incident, but she was not examined by the prosecution before the Trial Court. It was further submitted that according to the case of the prosecution, Complainant Amar Singh was given a tape recorder and a cassette for recording of conversation between him and the Appellant, but the tape conversation was not produced before the Court nor was a transcript thereof produced before the Court. It was further submitted that both panch witnesses R.H. Pandey (PW4) and S.C. Khuntiya (PW5) have also not supported the case of the prosecution and they have categorically admitted the fact that no conversation had taken place in their presence. Thus, in this case, demand or acceptance is not established in any way. Mere on the basis of recovery of tainted money, offence cannot be said to be proved. In this regard, reliance has been placed upon **(2017) 15 SCC 560 (State through CBI v. Dr. Anup Kumar**

Srivastava), (2016) 12 SCC 150 (V. Sejappa v. State), (2017) 8 SCC 136 [Mukhtiar Singh (since deceased) His Legal Representative v. State of Punjab) and (2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin).

6. Per contra, Learned Counsel appearing for the Respondent opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. V.K. Belchandani (PW1) is the witness from whom O.P.D. Register (Article A) was seized vide Ex.P1. N.K. Chandrakar (PW2) is the witness from whom appointment order (Ex.P4), posting order (Ex.P5) and service book (Ex.P6) of the Appellant were seized. Ashwani Kumar Sharma (PW3), Revenue Inspector prepared spot-map (Ex.P8). R.H. Pandey (PW4) and S.C. Khuntia (PW5) are panch witnesses. They have deposed according to the case of the prosecution. But, to some extent, they have not supported the case of the prosecution and, therefore, they have been declared hostile. Both these witnesses have admitted the fact that at the time of trap proceeding, they were standing out of the District Hospital near a window of the hospital. Later on, when they were asked to enter the hospital, they entered and saw that the members of the Anti Corruption Bureau had caught the hands of the Appellant. Both these witnesses have categorically admitted that they had not entered the hospital on giving signal by the Complainant, but they had entered the hospital on being asked by Investigating Officer Anil Pathak (PW10). Both these witnesses have also admitted that in the Rest House, no talk had taken place

between them and the Complainant nor had they read the complaint. Both have also admitted the fact that in the Rest House, the Complainant was given a tape recorder with a new cassette and battery and he was also given a demonstration for the purpose of recording of conversation between him and the Appellant. S.C. Khuntiya (PW5) has further deposed that some person had gone along with the Complainant to the room of the Appellant. But, he has not deposed about the identity of that person nor has the prosecution examined that person.

9. Constable Pawan Pathak (PW6) was one of the members of the trap party. He has supported the case of the prosecution. However, he has deposed that when the Complainant gave signal then the trap party entered the hospital and thereafter he completed the proceedings of washing of hands of the Appellant in a solution of sodium carbonate, dipping of his apron and the recovered tainted currency notes into different solutions of sodium carbonate. This witness has also admitted that Baisakhinbai had remained present in the hospital during the entire trap proceeding.
10. Amar Singh (PW7) is the Complainant of this case. In paragraphs 3 and 4, he has deposed that he was given a tape recorder for recording conversation between him and the Appellant and when he reached in the chamber of the Appellant, at that time, the Appellant was examining other patient. At that time, he had started the tape recorder for recording of the conversation took place between him and the Appellant. This witness has further deposed that after examining the said patient, the Appellant asked him about the money. He asked him whether he had brought the money or not. He replied him that he had brought the money. On

this, the Appellant asked him to sit outside the chamber and took Baisakhinbai inside the dressing room. He sat outside for about $\frac{1}{2}$ to $\frac{3}{4}$ hour. Thereafter, he again entered the chamber of the Appellant. At that time, dressing of Baisakhinbai was completed and she was sleeping there and the Appellant was not present there. The Appellant again returned there and asked him for the money. On this, he gave him money and also gave a signal to the trap party. The trap party entered the chamber of the Appellant and caught him. This witness has further deposed that for the period from 17.1.2005 to 18.1.2005 Baisakhinbai was treated, but no money was asked by the Appellant therefor. This witness has further admitted that on 7.2.2005, the Appellant had performed surgery of abscess of Baisakhinbai and after the surgery, the Appellant, looking to their financial condition, had advised for dressing of Baisakhinbai at some hospital situated at Bhilai and he had further advised to come to the District Hospital, Durg only on arising of a necessity. This witness has further admitted that according to prescription slip, Baisakhinbai had to come to the District Hospital, Durg for dressing on 14.2.2005 and he had not given any prescription slip for her dressing on 10.2.2005. he has further admitted that Baisakhinbai was also aware of the fact of discussion for money took place between him and the Appellant.

- 11.** Santosh Nishad (PW8), A.G.-II of the Law and Legislative Affairs Department, Raipur has deposed that sanction order (Ex.P21) for prosecution of the Appellant was granted by the then Additional Secretary of the Law and Legislative Affairs Department.
- 12.** Agamram Verma (PW9), Head Constable is the witness who had smeared phenolphthalein powder on the four currency notes each

of Rs.100/- in the Rest House, Durg and had kept those smeared notes in the pocket of the shirt worn by the Complainant. This witness has also deposed that he had taken all the seized solutions of sodium carbonate to the FSL.

13. Investigating Officer Anil Pathak (PW10) has deposed according to the case of the prosecution. However, he has stated in paragraph 9 that he had sent the Complainant to the District Hospital, Durg with the bribe money on 10.2.2005 at 9:45 a.m. After sometime, the Complainant gave a signal. On this, they entered the hospital and caught the Appellant. This witness has also admitted that prior to conducting the trap proceeding, surgery of Baisakhinbai had taken place on 7.2.2005. This witness has also admitted that the Complainant was given a tape recorder and a cassette for recording of conversation between him and the Appellant, but no transcript of the conversation was produced before the Trial Court. According to this witness, he had asked the Complainant about recording of the conversation, but the Complainant had told him that he could not record the conversation took place between him and the Appellant.

14. On a minute examination of the evidence available on record, it is clear that on 7.2.2005, surgery of Baisakhinbai had taken place and she was given a prescription slip mentioning therein date of 14.2.2005 for her dressing. But, instead of 14.2.2005, the Complainant brought her to the District Hospital, Durg on 10.2.2005 for her dressing. From the statement of the Complainant, it is also established that when the surgery was performed on 7.2.2005, at that time, the Appellant himself, looking to the financial condition of the Complainant and Baisakhinbai, had

advised for dressing of Baisakhinbai at some hospital situated at Bhilai and had further advised for bringing her to the District Hospital, Durg only on arising of a necessity. In these circumstances, it is suspicious that the Appellant would have demanded bribe of Rs.600/- on 7.2.2005. Therefore, it is suspicious that any demand for bribe was made by the Appellant on 7.2.2005. With regard to the incident, according to the prosecution, the Complainant was given a tape recorder and a cassette on 10.2.2005 for recording of conversation between him and the Appellant. But, no transcript of conversation has been produced by the prosecution before the Trial Court. Though Investigating Officer Anil Pathak (PW10) has stated that the Complainant himself could not record the conversation between him and the Appellant and, therefore, no transcript thereof could be prepared and produced before the Court, he did not prepare any panchnama in this regard. According to the Complainant, when he had gone to the Appellant, he had started the tape recorder for recording of conversation. In these circumstances, had any conversation taken place between him and the Appellant, that would have been recorded by him in the tape recorder. There is no statement given by the Complainant himself that he could not record the conversation. Therefore, the statement of Investigating Officer Anil Pathak that the Complainant himself could not record the conversation and, therefore, no transcript thereof was prepared and produced before the Trial Court is not acceptable. Even after recording of the conversation why transcript thereof was not prepared and produced before the Trial Court has not been explained by the prosecution and this is clearly fatal to the case of the prosecution. According to the statement of the Complainant,

on the date of trap, he first entered the dressing room of the Appellant. At that time, some other patient was present there with the Appellant. Therefore, the Appellant asked the Complainant to wait for him and sit outside the room. On this, he came out and waited for the Appellant for about 45 minutes. Thereafter, he again entered the room of the Appellant and thereafter the Appellant made the alleged demand of money from him and thereafter on giving a signal by him the trap party entered the room of the Appellant. But, Investigating Officer Anil Pathak has not stated in this manner. According to the Investigating Officer, the Complainant entered the room of the Appellant and thereafter gave a signal and on this the trap party entered the room of the Appellant and caught him. Both panch witnesses R.H. Pandey (PW4) and S.C. Khuntiya (PW5) have also deposed in the same manner. Thus, the statement of the Complainant that with an interval of about 45 minutes, he met with the Appellant two times for giving him bribe money and, thereafter the trap was conducted is suspicious. In these circumstances, any demand was made by the Appellant on 7.2.2005 or on 10.2.2005 is not proved beyond reasonable doubt. It is settled law that mere on the basis of recovery of tainted money, conviction cannot be based. Demand and acceptance is a *sine qua non* for conviction of the accused. In the instance case, demand is missing and suspicious. Material contradictions have occurred in the statements of the Complainant and the Investigating Officer. Material witness Baisakhinbai has also not been examined by the prosecution. Transcript of the conversation took place between the Complainant and the Appellant has also not been produced before the Trial Court. Thus, a presumption can be drawn against the prosecution. For

the aforestated reasons, in my considered view, the prosecution has not been able to prove its case.

- 15.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 16.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE