

**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on : 11.04.2019**

**Judgment Delivered on : 13/05/2019**

**Cr.A. No. 852 of 2016**

- Bhimsen Dewangan S/o Late Shri Motilal Dewangan, Aged About 57 Years, By Occupation- Sub Engineer (In-Charge Assistant Sub Divisional Officer) Office Of- Executive Engineer, Rural Engineering Services, Sambhag- Kanker, District- North Bastar Kanker, Chhattisgarh.

[Originally R/o Koshtapara, Dhamtari, District- Dhamtari, Chhattisgarh]

**---- Appellant**

***Versus***

- The State Of Chhattisgarh, Through: State Economic Offences Investigation Bureau, Raipur, Unit At- Jagdalpur, District- Bastar, Chhattisgarh

**-----Respondent**

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| For Appellant        | : Mr. D.K. Gwalre, Advocate    |
| For Respondent/State | : Mr. H.S. Ahluwalia, Dy. A.G. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**C A V JUDGMENT**

**13/05/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 21.06.2016, passed by the Special Court (constituted under the Prevention of Corruption Act, 1988), North Bastar, Kanker (C.G.), in Special Anti-Corruption Case No. 06/2014, convicting the appellant for the offence under Section 07 of the Prevention of Corruption Act and

sentencing him to undergo R.I. for 01 year and fine of Rs.5000/- and for under Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 and sentencing him to undergo R.I. for 03 years and fine of Rs.10,000/- with default stipulations.

2. The case of prosecution in brief is this that complainant- Kubal Singh Bhusakhare (P.W.-2) filed a written complaint (Ex.-P/15) in A.C.B., Jagdalpur on 10.02.2013 alleging that appellant is making a demand of bribe of Rs. 10,000/- for giving technical approval to the work done by the complainant under the contract given to him by Gram Panchayat, Godari. The complainant was then provided with digital voice recorder and instructed to bring a recording of conversation with the appellant regarding the demand. The complainant then brought back the digital voice recorder with the recorded conversation in it and again insisted that he wants action against the appellant. A Panchnama (Ex.P/16) was prepared by D.S.P.- M.L.Negi (P.W.-11) regarding the receipt of digital voice recorder. On 11.02.2013, the complainant again presented an application for taking action against the appellant. The transcript of the conversation in digital voice recorder was prepared vide Ex.P/17 and two CDs were also prepared for the same and seizure of these articles was made vide Ex.P/18. The witnesses were summoned and a team was constituted for conducting the raid. On 12.02.2013 at 07:00 a.m., in the morning, all the members of the team gathered in the office of A.C.B., Jagdalpur, where the complainant also appeared. The complaint

made by the complainant- Kubal Singh (P.W.-2) was verified by the Panch Witnesses, then complainant- Kubal Singh (P.W.-2) produced currency notes of Rs.10,000/- intended to be given in bribe. The serial numbers of the currency notes were noted down in preliminary Panchanama. Demonstration of trap procedure was given in presence of witnesses and all the team members, which has been recorded in the preliminary Panchanama. The team and the witnesses proceeded to the spot, where the appellant was to be found on the same day. The team and witnesses waited outside while the complainant- Kubal Singh (P.W.-2) approached the office of appellant. The complainant – Kubal Singh (P.W.-2) after coming inside the office made a call from his mobile phone and informed that the appellant has received Rs.10,000/- bribe and has kept the same in the right pocket of his full pant and has also signed the cheque for payment. The members of the raiding party then approached the appellant, where he was found sitting in his chamber. The team members introduced themselves, thereafter the fingers of both the hands of appellant were washed in the solution of Sodium Carbonate and the solution turned into pink colour. The solution was preserved and sealed. On asking, the appellant informed that he has kept the currency notes of Rs.10,000/- in the right pocket of his full pant. The Panch witness- Tulsi Ram Thakur then took out the bribe money from the appellant along with his purse from the right pocket of his full pant. The numbers of notes

recovered from the appellant were verified from the serial numbers noted down in the preliminary Panchnama were found to be the same. The currency notes so recovered were also washed in the solution of Sodium Carbonate and the colour of the solution turned into pink which was again preserved and sealed. The hands of panch witness Tulsi Ram were also washed in another similar solution and the colour of the solution changed into pink, which was preserved and sealed. At the same time the fingers of both of the hands of complainant Kubal Singh (P.W.-2) were also washed in the solution of Sodium Carbonate and the colour changed into pink and the solution was preserved and sealed. The right pocket of the full pant of the appellant and his purse both were washed in the solution of Sodium Carbonate and the colour changed to the pink which was also preserved and sealed. The seizure of all the sealed bottles of solutions, the currency notes, the purse of the appellant, the full pant of the appellant and one mobile handset was made vide Ex.P/3 and Ex.P/4. At the same time, the files regarding construction of boundary wall regarding which the complainant had received the contract, were seized from the complainant vide Ex.P/5 and Ex.P/6. The conversation recorded by the appellant in the digital voice recorder at the time of giving and taking bribe was heard by the panch witnesses and a transcript vide Ex.P-9 was prepared for the same. A panchnama of complete procedure vide Ex.P/16 was prepared. The seized bottles of solutions were sent for

examination to F.S.L. Raipur vide Ex.P/33. The F.I.R. (Ex.P/28) was lodged, accordingly the case was investigated. The F.S.L. report (Ex.P/31) confirmed that the tainted solutions in the bottles, the washings of the hands of the appellant, the complainant & the panch witness and the articles had content of phenolphthalein. After completion of investigation, charge-sheet was filed before the Court concerned.

3. The trial Court charged the appellant for the offence under Section 07 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The appellant denied the charges and prayed for trial. The prosecution examined as many as 13 witnesses on its behalf and closed the prosecution case. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. It has been stated in defence that the appellant had given loan of Rs.10,000/- to the complainant- Kubal Singh (P.W.-2) as he had the necessity for making purchase of cement and for making payment to the labourers, which was returned on the date of incident. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as aforementioned.
4. It is submitted by the learned counsel appearing on behalf of the appellant, that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The complainant-

Kubal Singh (P.W.-2) has not supported the prosecution case and he has supported the defence story, that he had borrowed Rs.10,000/- from the appellant and had returned the same on the date of incident. Therefore, the prosecution has discredited him. The other important witnesses of this case Mangani Bai (P.W.-3), Shyamu Ram (P.W.-4) and Chintamani (P.W.-5) have also not supported the prosecution case and declared hostile by the prosecution. Chintamani (P.W.-5) was the person before whom the bribe money was given regarding which he had not made any statement. It is submitted that demand is not proved. The transcript Ex.P-9 and P-17 are not admissible in evidence as the voice of the speaker of the same has not been identified. Therefore, it is prayed that no case is made out against the appellant. Therefore, the appellant deserves to be acquitted. Reliance has been placed on the judgment of Supreme Court in ***B. Jayaraj Vs. State of Andhra Pradesh***, reported in **(2014) 13 SCC 55**, in which it is held by the Supreme Court, that it is settled position in law that the demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes can not constitute the offence under Section 07 of the Prevention of Corruption Act, unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. The appellant has also relied upon the judgment of Supreme Court in case of ***Mukut Bihari & Ors. Vs. State of Rajasthan***, reported in **(2012) 11 SCC 642** and

**P. Satyanarayana Murthy Vs. The District Inspector of Police and Ors.**, reported in **(2015) 10 SCC 152**, in which the Hon'ble Supreme Court has similarly held on the point of admissibility of transcription of the recorded conversation. The counsel for appellant has also relied upon the judgment of Supreme Court in case of **K.M. Mallaiah Vs. State of Karnataka**, passed in Criminal Appeal No. **260 of 2015**, **decided on 10.02.2015**, in which it was held that the non-production of micro tape recorder, in which the conversation was recorded in the trial Court, is fatal to the prosecution. It is prayed that the appellant be acquitted of charges.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Although the prime witness i.e. the complainant- Kubal Singh (P.W.-2) and other witnesses have not supported the prosecution case, but the prosecution had been strong in presentation of the circumstantial evidence. The manner in which the appellant received the bribe amount and the proof of recovery is not denied, on account of the stand taken by the appellant, that he had received money, which was a repayment of loan and the other circumstances of the held up payment of the work done by the complainant are sufficient to hold that the appellant had received money from the complainant as bribe. Therefore, demand and acceptance both have been proved successfully by

the prosecution and there is no room for interference in the impugned judgment. Reliance has been placed on the judgment of **Madras High Court** in case of **P. Veeramuthu Vs. State by Inspector of Police Vigilance and Anti Corruption**, reported in **2007 Vol (1) MLJ (Cri.) 1317**.

6. I have heard the learned counsel for both the parties and perused all the documents and records of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. The only issue raised in this appeal by the appellant is this that there had been no demand of bribe by the appellant. On the other hand the appellant's defence is that the complainant had borrowed Rs.10,000/- from him and the same was returned to him on the date of incident. Therefore, there is no dispute that the appellant had received Rs.10,000/- from the complainant on the date of incident. Hence, the only issue to be determined is this whether the receipt of the money by the appellant was against any demand of bribe or not.
9. Kubal Singh (P.W.-2) has stated that he had executed some construction work for Panchayat and was unable to make payment to the labourers, for that he had borrowed Rs.10,000/- from the appellant for making payment to the labourers. As he had to repay the borrowed money within 15 days, therefore, he

approached Ex-Sarpanch- Narayan Usendi to borrow Rs.10,000/- to make the payment to the appellant, he agreed but on condition that Kubal Singh (P.W.-2) would have to do what he wanted. Thereafter, on the asking of Narayan Usendi, he received one recording equipment, which he had kept with him while he returned Rs. 10,000/- to the appellant. He has denied his signature on Ex.P/13, the complaint Ex.P/14 and 15. Similarly, he has denied the signature on all the documents of the prosecution. The witness was then declared hostile and he was cross-examined by the prosecutor. He has denied all the suggestions given by the prosecutor including about the recording of the conversation with the appellant and he has not supported the prosecution case in any manner.

10. Mangani Bai (P.W.-3) was the Sarpanch of the Panchayat from where the complainant had received the order. She has stated that payment of work done has been made after final execution, there is no statement made by her against the appellant.
11. Shyamu Ram (P.W.-4) has also not made any statement against the appellant. He is the witness of complaint verification Ex.P/16, execution of transcript Ex.P/17 and seizure memo Ex.P/18, but he has not supported the prosecution regarding the memos, therefore, he has been declared hostile. He has not made any admission in favour of the prosecution in the cross-examination by the prosecutor.

12. Chintamani (P.W.-5) was examined as witness of giving and taking of bribe. He has also not made any statement, therefore, he was declared hostile by the prosecution. In the cross-examination by the prosecutor, he has not made any admission in favour of the prosecution. The direct witnesses who are supposed to support the evidence to testify and support the demand have not supported the prosecution case. Therefore, the other witness in this respect has to be examined.
13. D.S.P., M.L. Negi (P.W.11) has stated that on 10.02.2013, when he had been to Antagarh, he received a written complaint (Ex.P/15). He has stated that to verify the complaint, he handed over one digital voice recorder to the complainant and asked him to bring a recording of the conversation of the complainant about the demand of bribe, regarding which a Panchanama (Ex.P/16) was recorded. Then, the complainant brought back the recorded conversation. A transcript was prepared of the same, which is Ex.P-17. Two numbers of CDs were also prepared, in which the voice of the appellant was identified by the complainant himself. The CDs were seized vide Ex.P-18. He has further stated that the complainant presented another complaint on 11.02.2013 i.e.Ex.P-14 and he again made a prayer that he wants action against the appellant. This witness has further stated about the proceedings taken up by him. In cross-examination he has denied the suggestions that the complainant had met with him and informed him, that the labourers are dissatisfied because they are not

getting payment. He has also denied that the complainant had informed that he had borrowed Rs.10,000/- from the appellant and was making repayment of the same. He has denied about making false case against the appellant. He has also denied that the complainant has not affixed his signature on any of the documents including the complaints, which are the basis of this prosecution. He has denied all the adverse suggestions given in defence.

14. Sunil Kumar Rathore (P.W.-1) is one of the panch witnesses, he has stated before the Court, that on 12.02.2013, he arrived in the office of the A.C.B. at Jagdalpur, where the complainant- Kubal Singh (P.W.-2) was present. He has stated about verifying the complaint from the complainant regarding which he had stated that appellant was making a demand of Rs.10,000/- from him for approving the construction, which he does not want to pay. He has also stated that he was present at the time of transcription (Ex.P/9) and the complainant was the person, who has identified the voice of the appellant. In cross-examination, no question has been put to him regarding the verification statement made by him in his examination-in-chief. Therefore, his statement has remained unchallenged. The other witnesses of the trap procedure has not been examined by the prosecution.
15. Constable- Rajendra Singh Thakur (P.W.-13) has also made a statement that in his presence, the panch witnesses verified the contents of the complaint from the complainant and expressed

their satisfaction.

16. Now the question is that the complainant- Kubal Singh (P.W.-2) has completely denied about giving any complaint, about putting his signatures on the complaints and on the Panchanama of the prosecution. He has come up with a new story that he had been pressurized by Narayan Usendi to fulfill his wishes and to falsely implicate the appellant. On the other hand, the only evidence available from the prosecution side is this that of the I.O. and of the panch witnesses, who have verified the complaint and expressed their satisfaction. Whether this much evidence would be enough to hold that the appellant was the person making demand is a question which needs to be answered in this appeal.
17. The evidence of verification supports only one circumstance. The other circumstances that were needed to prove, that some work was withheld by the appellant and it had been a condition from the appellant side making demand of the bribe, before the approval of the said work was done. No witness has been examined in this respect and the other witness who could have stated in this respect, i.e Mangani Bai (P.W.-3), who happens to be the Sarpanch of the said Panchayat has not made any such statement. Shyamu Ram (P.W.-4), who appears to be acquainted with the Panchayat affairs has not made any statement that any matter of the complainant was pending for the approval with the appellant. Therefore, his evidence of verification alone cannot be regarded as sufficient to inspire confidence of this Court that

money that was handed over to the appellant was for payment of bribe.

18. After due consideration and close scrutiny of the relevant evidence on the point in issue, I am of this opinion that prosecution has failed to prove its case beyond reasonable doubt that the appellant had made any demand from the complainant and the money paid to him by the appellant was with respect to demand of bribe. Therefore, on the basis of this finding, this appeal deserves to be allowed, therefore, the appeal is allowed and the appellant is acquitted of all the charges against him and conviction against him is hereby set aside.
19. The appellant is reported to be on bail, his bail bonds shall continue for a period of six months subject to the provisions of Section 437 of Cr.P.C.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge