

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 205 of 2015**

The State of Chhattisgarh, Through - District Magistrate,
Kondagaon (C.G.)

---- Appellant

Versus

Arvind Ekka, S/o – Late Shri M. Ekka, Aged about - 37 years, The
Then Sub Divisional Magistrate, Kanker, District - Kanker (C.G.)

---- Respondent

For State/Appellant : Shri A.N. Bhakta, Dy. A.G.

For Respondent : Shri Basant Dewangan, Advocate on behalf of
Shri Anup Majumdar, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

01/05/2019

1. This acquittal appeal is preferred against the judgment dated 22nd April, 2014 passed by Special Judge, Prevention of Corruption Act, 1988 District - Kondagaon, (C.G.) in Special Case No. 11/2013 wherein the said Court acquitted the respondent for commission of charge under Section 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short “the Act, 1988”) for demand of illegal gratification to the tune of Rs. 5,000/- for releasing one Binu Raj (PW-1) who was arrested in a case under Section 151, 107 and 116 of the Code of Criminal Procedure, 1973 and received Rs. 3,500/- as illegal gratification.
2. In the present case, the respondent was posted as Sub-Divisional Officer (Revenue) and Sub-Divisional Magistrate at Keshkal during 20th December, 2001 to 7th January, 2002 and as such he was working as public servant. It is alleged that one Binu Raj (PW-1) was arrested for the offence as mentioned above and produced

before the respondent who demanded sum of Rs. 5,000/- from him for order of release in favour of said Binu Raj (PW-1). It is further case of the prosecution that on 7th January, 2002, the respondent received Rs. 3,500/- thereafter FIR was registered against him. The matter was investigated, respondent was charge-sheeted and after completion of trial, acquitted as mentioned above.

3. Learned counsel for the State/appellant submits that charges levelled against the respondent is proved by evidence of Binu Raj (PW-1) and other member of trap party, therefore, the finding arrived at by the trial court is liable to be reversed.
4. On the other hand, learned counsel for the respondent submits that charges levelled against the respondent is not proved by evidence of Binu Raj (PW-1) and other member of trap party, therefore, finding arrived at by the trial court is not liable to be interfered with.
5. Binu Raj (PW-1) did not depose before the trial court in his examination-in-chief as to on what date, the respondent demanded illegal gratification. Though, he replied of question by the trial Court that demand was made on 20th December, 2001 at about 3:00 to 3:30 pm. when police produced him before the Court of respondent. The person who produced the complainant Binu Raj (PW-1) before the respondent is Constable Shiv Kumar (PW-7) as per version of this witness he produced Binu Raj (PW-1) before the Court of respondent and respondent ordered for his release. As per version of this witness, there was no occasion for Binu Raj (PW-1) to meet with the respondent. As per version of Binu Raj (PW-1) and Shiv Kumar (PW-7), it is not clear that the respondent demanded illegal gratification on the date of his arrest.

6. Looking to the evidence, the trial Court opined that demand of illegal gratification is not established and amount of Rs. 3,500/- is not seized from possession of the respondent. Though, it is alleged that it is seized from house of the respondent, but fact remains that the respondent did not take the said amount. One Kadru Ram (PW-6), Peon in the house of respondent deposed before the trial Court that Binu Raj (PW-1) tried to meet the respondent, but he could not succeed because respondent was not feeling well.
7. From the entire evidence, it is not clear that respondent received any amount from the complainant knowing to be illegal gratification. Corroborating piece of evidence regarding washing of hand of respondent from Sodium-Carbonate Solution and turned in pink is also not incriminating in nature because amount was directly not seized from possession of the respondent.
8. It is settled law that when two views are possible, the view which is favourable to the accused/respondent should be accepted. Finding of the said court is not based on extraneous or irrelevant material, but it is based on relevant material placed on record and legal aspect of the matter which is not liable to be interfered with invoking jurisdiction of appellate Court.
9. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge