

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 02.04.2019****Judgment Delivered on : 26/06/2019****CRA No. 888 of 2017**

- Santosh Kumar Dewangan S/o Late Shri Hari Ram Dewangan, Aged About 45 Years, The Then Sub Divisional Officer Bilaspur, District Bilaspur, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh Through Superintendent of Police E.O.W. / A.C.B. Raipur, District Raipur, Chhattisgarh., Chhattisgarh

--- Respondent

For Appellant : Shri Kishore Bhaduri and Shri Pankaj Singh, Advocates.
For Respondent/State: Shri H.S. AhluWalia, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**C A V JUDGMENT****26/06/2019**

1. This appeal has been preferred against judgment dated 06-06-2017 passed in Special Case No.440/2014 by the Special Judge (Prevention of Corruption Act), Bilaspur, Chhattisgarh convicting the appellant under Section 13(1)(d)(ii) r/w Section 13(2) of Prevention of Corruption Act, 1988 and Sections 467, 468 and 471 of the IPC and sentencing him with R.I. for 4 years, R.I. for 7 years, R.I. for 5 years and R.I. for 4 years along with fine of Rs.1,50,000/-, Rs.1000/-, Rs.1000/- and Rs.500/- respectively with default stipulations and direction that all the jail sentences shall run concurrently.

2. The case of the prosecution, in brief, is this, that the appellant was posted as Sub-Divisional Officer (revenue) at Bilaspur on the date of incident. Complainant one Kamlesh Shukla filed a written complaint before the EOW/ ACB Raipur making an allegation that the appellant had manipulated the order dated 18-06-2009 passed in revenue case No.919/b-121/2007-08 in favour of co-accused Chitpal Singh Walia, after taking bribe of Rs.15,00,000/-. The complaint against co-accused was this, that he without obtaining colonizer license had developed a colony and had encroached upon the Govt. land. Earlier the order dated 18-06-2009 was passed by this appellant imposing fine of Rs.1,50,000/- upon the co-accused, but, after taking bribe from co-accused, the order passed was manipulated and the portion of the order imposing fine amount was deleted. On the basis of the complaint a preliminary enquiry was made by Anil Pathak, DSP, ACB (PW-22) who submitted a report dated 14-10-2010 that offence is made out against the appellant. On that basis unnumbered FIR Ex.-P/12 was lodged and subsequently a numbered FIR Ex.-P/9 was also registered. The investigation was taken up, the material documents were seized vide Ex.-P/1 to Ex.-P/6. Copy of the alleged order Article 14 was seized and copy of the manipulated order were also seized in the form of Article 4, 5, 5A and 5C. Fine register of current year was also seized. Statement of witnesses were recorded. On completion of the investigation, after obtaining sanction for prosecution from the State Government, charge

sheet was filed before the concerned Court.

3. The appellant was charged with offences under Section 7, 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 467, 468, 471 and 120B of the IPC. At the same time co-accused Chitpal Singh Walia was charged with offences under Section 467, 468, 471 and 120B of the IPC. The appellant and the co-accused both denied the charges and prayed for trial.
4. The prosecution examined 23 witnesses and on completion of prosecution evidence, the appellant and the co-accused were examined under Section 313 of the Cr.P.C. in which they denied all the incriminating evidence against them, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned, whereas, co-accused Chitpal Singh Walia was acquitted from all the charges framed against him.
6. It is submitted by learned counsel for the appellant that this is a case of complete false implication. The prosecution has not proved its case beyond reasonable doubt. The order which is said to be manipulated was not produced in original and proved before the Court. Therefore, such document which is only the photocopy should not have been admitted by the Court in evidence and relied upon for convicting the appellant in this case, whereas, the certified copy of the order dated 18-06-2009 Ex.-D/1 very clearly reflects, that fine sentence was never

imposed upon the co-accused, compared to which reliance of the prosecution Article 14 which is not a proved document as not produced in the original form or a certified copy which is not an evidence at all. Another evidence which the prosecution has relied upon is Register article C which is not a register which has to be kept and maintained according to any of the Rules, although the other register namely Article 10 which is a regularly maintained register of penalties imposed and in accordance with the rules, does not mention any such entry of any fine to be realized from the co-accused. Therefore, existence of manipulated order was never proved by the prosecution. It is also submitted that in such a case, by passing order for removal of encroachment, no sentence of fine could have been imposed under the provisions in which case was decided. Apart from that, neither of the parties to the said order have challenged it before the Superior Court. Above all, the complainant in this case had no locus standi as he was not an interested party. Hence, it is prayed that the appeal may be allowed and the appellant may be acquitted of the charges.

Reliance has been placed on the judgment delivered by Hon'ble the Supreme Court in the matter of **Anowar Hussain Vs. Ajoy Kumar Mukherjee**, AIR 1965 SC 1651, wherein, it is held that Act done or ordered to be done in the discharge of judicial duties has absolute protection under Judicial Officers' Protection Act, 1850.

On behalf of the appellant reliance has also been placed on the judgment delivered by M.P. High Court in the matter of **State of M.P. Vs. Rajeev Jain**, 2001 (4) MPHT 58, wherein it has held that the prosecuting agency cannot be allowed to sit in judgment over the orders passed on judicial or quasi-judicial side by a Judge. May be that the accused Collector has mistaken even grossly mistaken, yet he acted judicially and for that reason no action shall lie against him. The wrong, if any, committed by him could be corrected in appeal.

Further, reliance has been placed on the judgment delivered by Hon'ble the Supreme Court in the matter of **State Of Maharashtra vs Dnyaneshwar Laxman Rao Wankhede**, (2009) 15 SCC 200, wherein it has been held that foundational facts pertaining to offence, i.e., demand, acceptance and recovery of the amount of illegal gratification must be established by prosecution.

Learned counsel for the appellant also placed reliance on the judgment delivered by Hon'ble the Supreme Court in the matter of **V. D. Jhingan Vs. State of Uttar Pradesh**, AIR 1966 SC 1762, it is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case; it is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and

submits that the prosecution has proved its case beyond reasonable doubt. It is submitted by the State counsel that the learned Judge of the Court below has very carefully examined and held in paragraph 20 that even if for sake of argument Article 6, register is deemed to be non-existent, then the same entry made in revenue case register Article 9, which was stricken down had to be explained. Article 9 is an officially maintained register therefore one cannot lose sight of its admissibility in evidence. Therefore, manipulation made by the appellant in the official order passed by him is proved. On this basis, it can be presumed that such manipulation was done for the reason of any corrupt practice played by the appellant. Hence, it is prayed that there is no room for any interference in the impugned judgment. Therefore, the appeal may be dismissed.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The first and foremost question raised in this appeal is admissibility of Article 14 in evidence as proof for manipulation/interpolation of the order. It is not in dispute that article 14 is neither original nor the certified copy, but it just a photocopy. In the second initial paragraph 8 of article 14 it is mentioned in last 7 lines that :-

“।, जो कि छ0ग0 पंचायत राज अधिनियम के धारा 61(घ) से (छ) एवं कालोनाईजर (रजिस्ट्रेशन निवर्धन एवं शर्त) नियम 1999 के तहत दंडनीय है अतः छ0ग0 पंचायत राज अधिनियम 1993 के धारा 61(घ) के

तहत अनावेदक क्रं.9 चितपाल सिंह वालिया को 150000 (एक लाख पचास हजार) रुपये अर्थदण्ड से दंडित करते हुये धारा 61(च) के तहत उपरोक्त वाद भूमि का अंतरण शून्य किया जाता है। धारा 61(छ) के तहत उपरोक्त भूमि पर स्थित कालोनी को ग्राम पंचायत लिंगियाडीह में निहित किया जाता है।”

Whereas, the certified copy of this order produced as Article 4, Article 5, Article 5A and Article 5C does not reflect the said portion of the order which is mentioned in Article 14.

10. The prosecution had made seizure of plain register which is titled as 'कालोनाईजर नियम के तहत आरोपित अर्थदंड पंजी' in which an entry was made in serial No.26 referring to the case number against the co-accused recording imposition of fine of Rs.1,50,000/- by order dated 18-06-2009, but the same entry was struck down and then written in the remarks column that the entry was made erroneously. Crux of the argument of the appellant side is this that there is no such rule in the Colonizer Rules for maintenance of register as is maintained as Article 6, which is being examined.
11. Chhattisgarh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1998 does not provide for maintenance of any such register in the given rules regarding imposition of fine etc. On perusal of Chhattisgarh Panchayat Raj Adhiniyam, 1993 and Chhattisgarh District Panchayat Raj Fund Rules, 1998, no such provision is found to authorize, for maintenance of register as is

maintained according to Article 6.

12. Next is question, that whether Sub-Divisional Officer exercising powers under Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short 'the Adhiniyam, 1993') and rules is invested with powers to penalize a person. The penal provision under Section 61D and 61E of the Adhiniyam, 1993 are as under:-

61D. Punishment for Illegal Colonization. - (1) A Colonizer who, in contravention of the provisions of Section 172 of the Chhattisgarh Land Revenue Code, 1959 (No. 20 of 1959) and the rules made thereunder, diverts the land or part thereof, commits an offense of illegal diversion of land.

(2) A Colonizer who divides his land or the land of any other person into plots with the object of establishing a colony in breach of the requirements contemplated in this Act or the rules made in this behalf, commits an offense of illegal colonization.

(3) Whoever commits or abets the commission of an offense of illegal diversion or illegal colonization shall be punished with simple imprisonment which may extend to six months or with a minimum fine of ten thousand rupees or with both.

(4) Whoever constructs a building in an area of illegal diversion or illegal colonization commits an offense of illegal construction.

(5) Whoever commits an offense of illegal construction shall be punished with simple imprisonment which may extend to six months or with a minimum fine of one thousand rupees or with both.

61E. Punishment for abetment of offense of Illegal Construction. - Whoever in the area of illegal diversion or illegal colonization or illegal construction,-

(i) being an officer having power to sanction layout or map for the construction of a building grants sanction or approves such layout or map; or

(ii) being an officer under a primary duty to do so knowingly omits to report illegal diversion of land or illegal construction of a building in such an area to the proper authority; or

(iii) being an officer or an employee responsible to take action against the illegal diversion of land or illegal colonization or illegal construction of a building in such an area fails to take action; or

(iv) being an officer or the authority competent to sanction electrical or water supply connection grants such sanction with respect to the building in such an area; or

(v) illegally influences the officers aforesaid in granting such sanction or in omitting to make a report of such illegal diversion of land or construction of building in areas;

shall be punished with simple imprisonment which may extend to six months or with fine or with both :

Provided that nothing contained in clause (iv) shall apply to the cases where the Collector, with the approval of the State Government, certifies that in public interest there is no objection to provide electrical and water supply connection to the building in the area of illegal diversion or illegal colonization.

13. On perusal of the penal provision of the Adhiniyam, 1993, it is very clear that penalty includes sentence of imprisonment as well as sentence of fine. There is no such other provision in the Adhiniyam, 1993 providing the SDO with jurisdiction to pass sentence of imprisonment as well as sentence of fine. Therefore, in such case, the authority to penalize a person charged with offence under Section 61D and 61E of the Adhiniyam, 1993 vests only with Judicial Magistrate under the provisions of Cr.P.C. which goes to show that the SDO has no authority to try and penalize any person under the provision of C.G. Panchayat Raj Adhiniyam, 1993.
14. After scrutinizing the provisions of law with respect to the powers of SDO it is found that the maintenance of register Article 6 is a register maintained without the authority of law or rules, therefore, is non-existent. The learned Judge of the lower Court has placed emphasis on the corresponding entry in the revenue case register Article 9 in which again an entry which was made and stricken down as an erroneous entry. The revenue cases register is not a register of penalties, this is a register in which

cases initiated before a revenue Court or register for entries regarding other details of the case including entry of the result. Therefore, it can be said that it is not an authentic register for making entries of the penalties imposed, whereas, the authentic register for making entry of penalty imposed is Article 10, in which no such entry has been found. Therefore, it needs consideration whether the entry in Article 9 which is a register produced in original before the Court can be regarded as sufficient evidence to corroborate the statement made by other witnesses to this effect.

15. Before drawing any conclusion evidence of the witnesses also needs examination.
16. The author of order dated 18-06-2009 which is produced as Article 4, 5 etc. and Ex.-D/1 has clearly denied that he has passed any order as is reflected in Article 14. The issue is of manipulation of the order concerned, regarding which the office staff who have been examined, namely, Ku. Maya Chaturvedi (PW-1), Ku. Sureya Bag (PW-2), Sukhdev Rajak (PW-3) who have not made any statement regarding manipulation of the order. Similarly, other witnesses concerned, namely Abhay Narayan Ray (PW-6), Shivratan Singh (PW-7) have also not made any statement regarding the manipulation.
17. Ishwar Kumar Dewangan (PW-8) was Reader of the appellant at the relevant point of time who has stated that after passing of the order on 18-06-2009 he found that a fine of Rs.1,50,000/- was

imposed upon the non-applicant/co-accused, thereafter he made entry to this effect in the register and in another register which he used to maintain. He has further stated that on the same day or other day the presiding officer, i.e., the appellant called for the record and when the record was received by him, he saw that the order was modified and imposition of fine was deleted and thereafter he had stricken down the entries in the register. In cross-examination his statement has remained unrebutted.

18. Kamlesh Shukla (PW-13) is the main witness and the complainant. He has stated that because of illegal colonization the road of the locality was obstructed regarding which a complaint was made. A case was registered and proceeding was initiated by the SDM Sanjay Agrawal and after his transfer the appellant was the person who was posted there, in that proceeding the appellant passed an order imposing a fine of Rs.1,50,000/- on the concerned and thereafter the order was changed in part and the order imposing fine was omitted or deleted. He obtained a copy of fine register and found that the entry of fine was made in that. When he repeatedly obtained the copy of the fine register again he found that the entry was struck off mentioning that it was an erroneous entry. The copies of the said entries in the fine register has not been confronted to him or exhibited by the prosecution, therefore, it is just an oral statement. In cross-examination he was confronted with the certified copy of the order Ex.-D/1 regarding which he refused to give any explanation. However, he has admitted that his statement is based only on the basis of Article 14. He has admitted that he is unable to

make any statement regarding any transaction of appellant with co-accused Chitpal Singh Walia, because he has neither seen nor heard about it.

19. Maninder Jeet Singh (PW-17) is the I.O. who has investigated the case and Inspector Smt. Rashani Vasnik (PW-18) took the charge from Maninder Jeet Singh (PW-17) and filed the charge sheet against the appellant.
20. DSP Budheshwar Sai Paikara (PW-20) has investigated the case in part. Similarly DSP Anil Kumar Pathak (PW-21) has also done part of the investigation.
21. Sardarilal Kashyap (PW-23) has stated that he was posted as Asstt. Grade –III at the time when the appellant was working and posted as SDO (revenue). A complaint had been received from the villagers that the co-accused Chitpal Singh Walia and others were constructing illegal colony, because of which road to the village has been obstructed. On the basis of this complaint a revenue case No.919/b-121/2007-08 was registered. According to his knowledge in the order passed on 18-06-2009 co-accused Chitpal Singh Walia was penalized with fine of Rs.1,50,000/-. He has stated that the record was received in the copying section, he had personally seen the original order in which the order of imposing fine of Rs.1,50,000/- and vesting the land with Panchayat was clearly mentioned in that order. He had applied for copy of that order, for which he was called at 4:00 p.m. When this witness approached the copyist at 4:00 p.m. he was told that the presiding officer has changed the order in which the order imposing fine and the order of vesting land to the Panchayat was deleted. In cross-examination he

had denied about giving any complaint against Chitpal Singh Walia and others regarding encroachment of Government land, although he has admitted that he is making statement for the first time before this Court and he has never given any statement before any authority earlier, but he was not confronted with his previous statement which was recorded in the investigation. He has denied other adverse suggestions given to him. On close scrutiny of all the statement he has made in cross-examination, it appears that he has not made any contradictory statement to the statement he has made in his examination-in-chief that he was the person who had seen the order in which there was mention of imposing of fine and vesting of land with the village panchayat, which was found missing in the order that was found to be passed later on after manipulation.

22. After closely scrutinizing all the evidence of relevant witnesses in this case and after overall consideration, I am of this opinion that the prosecution has successfully proved this fact that the appellant had tampered with the order passed by himself, on 18-06-2009 in revenue case No.919/b-21/2007-08. Article 14 does not have a relevance as evidence and the documentary evidence is not leading to any conclusion, but, there is ocular evidence present by way of statement of Kamlesh Shukla (PW-13) and Sardarilal Kashyap (PW-23), that they personally saw the order which was earlier passed by the appellant and thereafter found that the original order has been replaced with the order in which a portion of imposing fine upon the co-accused Chitpal Singh Walia and order of vesting of the land with the Gram Panchayat was found to be deleted.

Therefore, the argument advanced by the learned counsel for the appellant on this appeal is without any substance.

23. Now the point for consideration is whether this act of the appellant is an offence punishable under the IPC or under Prevention of Corruption Act.
24. Complainant Kamlesh Shukla (PW-13) had made clear allegation in his complaint Ex.-P/13 that the appellant had taken illegal gratification for modifying the order, but, he has not made any such statement before the Court, that for modifying the order the appellant had taken any illegal gratification. The statement regarding modification and tampering the order has also been made by Ishwar Kumar Dewangan (PW-8), but, he has also not made any statement regarding any underhand dealing. Similarly, another connected witness who has made statement is Sardarilal Kashyap (PW-23), who has also not made any such statement. Therefore, there is total absence of evidence on the point of any demand made, bribe money passing hands and being accepted by the appellant.
25. In cases of offence under Section 7 and 13(1)(d) the proof of demand and acceptance is sine qua non for convicting any accused person, which has been held in **State of Maharashtra vs Dnyaneshwar Laxman Rao Wankhede** (supra), **B. Jayaraj v. State of Andhra Pradesh**, (2014) 13 SCC 55, **Krishan Chander vs. State of Delhi**, (2016) 3 SCC 108 and various other cases by Hon'ble the Supreme Court. Therefore, on this point it is held that the prosecution has failed to prove against the appellant regarding

demand of any bribe made and in furtherance of that making acceptance of the same. Hence, on the basis of this finding it is held in this appeal that the charges against the appellant under Section 7 and 13(1)(d) read with 13(2) of Prevention of Corruption Act had not been proved, therefore, conviction recorded thereof in the impugned judgment is bad in law.

26. On the basis of all the available proof, what shall be the scope for conviction of the appellant for offence under Section 467, 468 and 471 of the IPC has to be considered.

27. Section 467 of the IPC reads as under:-

“467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

28. Similarly valuable security has been defined under Section 30 of the IPC, which reads as under:-

30. “Valuable security”.—The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under

legal liability, or has not a certain legal right.”

In **Charu Chandra Ghose vs. Emperor**, reported in AIR 1924 Cal. 502, it was held by Calcutta High Court, that a decree or order passed by a Court is not a valuable security as defined under Section 30 of IPC for the purposes of Section 467 & 468 of IPC. This view was reiterated in **Ram Chander V. State**, reported in 1966 CrLJ 944 by Rajasthan High Court.

Therefore, on perusal of the provisions above and considering the view available it is very clear that valuable security is a document creating or extinguishing rights. Any order passed by any authority in exercise of the powers vested upon him cannot be regarded as valuable security or any other document as is mentioned in Section 467 of the IPC.

29. Therefore, the disputed order which was passed by this appellant in his official capacity is definitely not a valuable security or any other document of this kind. As the co-accused has been acquitted in this case from all the charges against him, that also is a ground to hold that any benefit was drawn from this order, by the co-accused is also not established. Apart from that, it is not a case of forgery, the order has not been forged it was passed authoritatively firstly and was thereafter modified by deleting the portion of order imposing fine.
30. What the case appears to be is this, that the appellant had after passing the earlier order has recalled his own order and substituted the same with the order that is exhibited as Ex.-D/1

and Article 4, 5, 5A & 5C. The question would be whether this amounts to any offence or not, the answer to which, is this, that passing a wrong order does not amount to any offence unless it is proved that such order was passed with malafide intention or on account of some corrupt practice. Only on the basis of evidence to this extent, that the order has been modified or altered it cannot be presumed that this order was passed with malafide intention or exercise of some corrupt practice. There is requirement of specific proof to come to such conclusion. The appellant had exercised its jurisdiction as a Court and passed the order which is a subject matter of this criminal case. The ratio of judgment **Anowar Hussain Vs. Ajoy Kumar Mukherjee** (supra) has a bearing on the finding which may be recorded in such a case.

31. It is a subject of consideration whether the order so recalled by the appellant was rightly recalled or wrongfully recalled. This could have been considered only in an appeal filed against the same order. As it is a fact brought to the knowledge of this Court, that none of the parties had filed any appeal against the disputed order passed by this appellant, therefore, the question which could have been legally determined has been left undetermined.
32. No need to mention that there is no provision in the Code of Criminal Procedure by which any criminal Court can recall its order, but, there is such power available in the Code of Civil Procedure. The appellant had passed the disputed order in the

capacity of a Revenue Court and Section 43 of the Chhattisgarh Land Revenue Code, 1959 provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall, so far as may be, be followed in all proceedings under this Code, and Section 51 of the Chhattisgarh Land Revenue Code, 1959 provides for Review of orders, although in case of reviewing any order passed by any revenue Court specific provision has to be invoked and procedure has to be followed.

33. Therefore, all that can be said regarding modification of the order in this case by the appellant is this, that he has not invoked the provisions of review and followed the procedure for reviewing the order earlier passed by him. Therefore, the order passed by him may suffer from illegality on account of lapse in following the procedure in law.
34. Hence, after due consideration, I am of this view that it may be a case of negligence and disregard to the provisions of law, which should have been followed before recalling the order, by the appellant, but it is not an offence under the IPC, specifically under Section 467, 468 and 471 of the IPC.
35. On the basis of discussions that have been made hereinabove and the findings as recorded in this appeal, I am of this view that conviction of the appellant for the offences in which he has been convicted and sentenced is bad in law and not sustainable. As a result, the appeal filed by the appellant is allowed. Conviction and

sentence of the appellant under Section 13(1)(d)(ii) r/w Section 13(2) of Prevention of Corruption Act, 1988 and Sections 467, 468 and 471 of the IPC are set aside. The appellant is acquitted of all the charges against him. He is reported to be on bail, his bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil