

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 08-01-2020

Delivered on 20-02-2020

CRA No. 2126 of 1999

- Awadh Lal Tiwari s/o. Ramadhar Tiwari, aged about 45 years, Asstt. Sub Inspector, Security, M.P.S.R.T.C., Durg (MP now CG).

---- Appellant.

Versus

- State of MP (now CG) through Special Police Establishment Office of Lokayukta, Bhopal (MP).

---- Respondent

For Appellant : Mr. Vivek Sharma and Mr. Aman
Kesharwani, Advocates

For respondent/State : Mr. Ishwar Jaiswal, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 10-8-1999 passed by the Special Judge (Prevention of Corruption Act), Raipur (CG) in Session Case No. 56 of 1999 wherein the said Court has convicted the appellant for commission of offence under Sections 161 of IPC and Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short, "the Act, 1947") and sentenced him to undergo RI for one year and fine of Rs.1000/- on each count with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, appellant is prosecuted on the allegation that he was working as Inspector, Security in Madhya Pradesh State Road Transport Corporation (for short, "MPSRTC), Durg and by misusing his rank, demanded illegal gratification of Rs.500/- from one Shiv Shankar Tiwari (PW/14) who was working as Conductor in the same office. The matter was reported and investigated. Appellant was charge-sheeted and convicted as mentioned above.

3 Learned counsel for the appellant submits as under:

- i) As per version of prosecution Dilip Kumar Tiwari was Conductor in the said transport depot, Durg and he did not pay passenger tax in Pulgaon barrier that is why one audit report was prepared by the appellant against him but no demand was made from the said Dilip Kumar Tiwari.
- ii) As per version of prosecution, demand was made from one Shiv Shankar but from the evidence of PW/14 Shiv Shankar it is clear that said Shiv Shankar borrowed a sum of Rs. 650/- from the appellant, therefore, receiving the amount from Shiv Shankar is returning of loan amount and

same is not tendered as illegal gratification.

- iii) As per version of Dilip Kumar Tiwari (PW/13), he did not inform his brother Shiv Shankar (PW/14) that appellant is demanding illegal gratification from him.
- iv) As per version of Anand Ram (PW/8), Shiv Shankar did not state about demand of Rs.500/- by the appellant. As there is no corroboration of statement of Shiv Shankar (PW/14) for demand, on the contrary complainant had borrowed a sum of Rs.650/- from the appellant, therefore, demand on the part of the appellant is not established. Again, when amount is returned as loan amount, it cannot be said that the appellant accepted illegal gratification.
- v) The trial court has over looked the material aspect of the matter, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in the matter of **B. Jayaraj vs. State of A.P., 2014 (13) SCC 55, T. Subramanan vs. State of Tamilnadu, 2006 (1) SCC 401, Ganga Kumar Shrivastava vs. State of Bihar, 2005(6) SCC 2011, and Jagdish Chandra vs. State of MP, 1990 MPLJ 239**

4 On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The question for consideration of this court is whether the appellant demanded illegal gratification from the complainant Shiv Shankar Tiwari and received the amount from him as illegal gratification.

7. PS/14 Shiv Shankar Tiwari deposed before the trial court that his cousin namely Dilip Kumar was Conductor in Durg Depot of State Road Transport Corporation and while the said Dilip Kumar was returning in bus from Rajnandgaon to Raipur. It is alleged that he did not pay the passenger tax at Pulgaon barrier that is why one audit

report was prepared by the appellant who was Inspector in the said Transport. As per version of this witness, appellant demanded a sum of Rs.500/- for not submitting the report in the office of Depot Manager, but version of this witness is not supported by any witness. In the present case, there is no shadow witness. Anand Kumar (PW/8) is retired Sub Inspector and as per version of this witness (para 9) complainant did not inform in the office that the appellant demanded Rs.500/- as illegal gratification, therefore, version of Shiv Shankar (PW/14) is not supported by version of any of the witness.

8. In the present case, the amount in question is Rs.500/-. Complainant Shiv Shankar admitted (para 10) that he borrowed a sum of Rs.650/- from the appellant 3-4 months since the incident. PW/1 Motiram, Anand Kumar (PW/8), PW/9 M.P. Sharma and Shiv Shankar Tiwari (PW/14) deposed before the trial court regarding acceptance of Rs.500/- by the appellant but the fact remains that when Shiv Shankar borrowed a sum of Rs.650/- from the appellant, there is possibility that the appellant was assuming that loan amount was returned by Shiv Shankar Tiwari (PW/14). It is not a case that the appellant and the complainant Shiv Shankar had no previous transaction. Both have previous transaction of money and therefore, the amount may be accepted bonafidely and same is amount of discharge of debt liability, therefore, it cannot be said that the appellant

received amount with guilty mind and received the amount as illegal gratification.

9. Taking into consideration the total facts emerged from evidence, it is not safe to record the finding in absence of any corroboration of statement of Shiv Shankar that demand was made by the appellant. Again, it cannot be said that he received the amount as illegal gratification. In the matter of **Krishan Chander vs. State of Delhi, reported in (2016) 3 SCC 108** Hon'ble the Supreme Court held as under:

“35. It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under [Sections 7](#) and [13\(1\)\(d\)](#) read with [Section 13\(2\)](#) of the PC Act. The same legal principle has been held by this Court in the case of B. Jayaraj (supra), A. Subair (supra) and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant.

37. In P. Satyanarayana Murthy (supra), it was held by this Court as under:

“21. [In State of Kerala and another vs. C.P. Rao](#), this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge

against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre- requisites of [Sections 7](#) and [13](#) of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under [Sections 7](#) as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the Act. Qua [Section 20](#) of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under [Section 7](#) and not to those under [Section 13\(1\)\(d\)](#) (i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any

official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7](#) and [13\(1\)](#) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or 13 of the Act would not entail his conviction thereunder.”

10. In the present case, there is controversy that the amount is returned which was borrowed by the complainant, therefore, acceptance by the appellant the said amount as illegal gratification is not proved. In absence of any proof of acceptance of illegal gratification presumption under Section 4(1) of the Act, 1947 is not

available. Conviction of the appellant under Sections 161 of IPC and Section 5 (1)(c) read with Section 5(2) of the Act, 1947 is not sustainable.

11. Accordingly, the appeal is allowed. Conviction and sentence imposed by the trial court is hereby set aside. The appellant is acquitted of the charges framed against him. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju