

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.344 of 2002

Judgment Reserved on : 11.2.2020

Judgment Delivered on : 12.6.2020

Shiv Narayan Namdev, son of Harnarayan Namdev, 38 years, resident of Patharaguda, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, District Bastar, Jagdalpur

--- Respondent

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

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 19.3.2002 passed by the 1st Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act'), Jagdalpur, District Bastar in Special Case No.4 of 2000, 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.500/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the Act	Rigorous Imprisonment for 1½ years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that at the relevant time, the Appellant was serving as an Assistant Grade-II in the office of City

Magistrate, Jagdalpur. After arrest of Jagbandhu, who was a friend of Complainant Sunil Kumar (PW3), an istgasa under Sections 107, 116 of the Code of Criminal Procedure was submitted before the City Magistrate, Jagdalpur. Vide Ex.P20, on 31.7.1999, the City Magistrate, Jagdalpur passed a preliminary order and bail was granted to Jagbandhu, but bail bond was not submitted in compliance with the order of the City Magistrate and thereafter Jagbandhu was sent to jail. According to further case of the prosecution, on 2.8.1999, Complainant Sunil Kumar (PW3) went to the office of City Magistrate and met with the Appellant there. He talked to the Appellant with regard to bail of his friend Jagbandhu. Allegedly, the Appellant made demand of bribe of Rs.1,000/-. Since he did not want to give bribe to the Appellant, he made a written complaint (Ex.P8) to the Superintendent of Police, Lokayukta, Jagdalpur. There he was given a tape recorder and a blank cassette for recording of conversation to be taken between him and the Appellant. On that day itself, he went to the office of City Magistrate and met with the Appellant there. The Appellant again made demand of bribe of Rs.1,000/- and a *patta* (Rin Pustika). He recorded the conversation took place between him and the Appellant in the tape recorder. Thereafter, he returned to the office of Lokayukta and submitted another written complaint (Ex.P1) on 3.8.1999. He also submitted the tape recorder and the cassette. Panch witnesses Deputy Collector Nand Kumar Soni and Deputy Collector Ganesh Ram Mandavi were called. Both were apprised of the complaint made by Sunil Kumar (PW3). Before these witnesses, Complainant Sunil Kumar (PW3) submitted 8 currency notes of Rs.50/- and 1 currency note of Rs.100/-, total Rs.500/-. A transcription of the conversation took

place between the Complainant and the Appellant was prepared by Head Constable Ramlal Gangesh (PW8) vide Ex.P11. A preliminary panchnama (Ex.P3) was prepared before the panch witnesses in which numbers of the currency notes submitted by the Complainant were noted. The currency notes were smeared with phenolphthalein powder. Both the panch witnesses and the Complainant were inculcated about the trap proceedings and necessary instructions were given to the Complainant about the said proceedings. Solutions of sodium carbonate were prepared and necessary documents were also prepared in this regard. Thereafter, the trap party including the Complainant reached to the office of City Magistrate, Jagdalpur. In the afternoon at 12:15 O'clock, the Complainant entered the office of City Magistrate. There, the Appellant again made demand of bribe. The Complainant handed over the currency notes of total Rs.500/- which were smeared with phenolphthalein powder and also a *patta* (Rin Pustika) to the Appellant. Thereafter, he came out and gave a signal to the trap party. Inspector M.L. Negi (PW10) gave his introduction and also of other members of the trap party to the Appellant. The Appellant was inquired about the bribe money. On this, the Appellant took out the money and Rin Pustika from a carton-box kept in a wooden rack placed beside the chair on which he was sitting. On being compared, numbers of the currency notes recovered from the Appellant were matched with the numbers already noted in the preliminary panchnama. Thereafter, hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. The recovered currency notes were also dipped in a solution of sodium carbonate and colour of that solution also turned into pink. On completion of

other formalities, a panchnama of the complete action taken was prepared. Documents relating to the appointment of the Appellant were obtained. The solutions used during the trap proceedings were sent to the Forensic Science Laboratory (FSL) for examination. FSL report is positive. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him.

3. In support of its case, the prosecution examined as many as 10 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. It was the defence of the Appellant that he did not make any demand for bribe. Virtually, on the request of the Complainant for making arrangement of a surety and for giving money to the surety, he had asked the Complainant for bringing money for the purpose of giving the same to the surety to be arranged. However, no witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Referring to the statement of Complainant Sunil Kumar (PW3), Learned Counsel appearing for the Appellant submitted that Sunil Kumar (PW3) has categorically stated that the said money was given to the Appellant for making arrangement of a surety and Sunil Kumar has also admitted the fact that the said money was to be given to the surety himself. Therefore, it is not established in any manner that the Appellant demanded any bribe. Thus, mere

recovery of the currency notes from the Appellant does not constitute any offence against him. It was further submitted that demand of bribe is also not proved in this case. Though according to the prosecution the conversation took place between the Appellant and the Complainant was recorded and a transcription thereof was also prepared, during trial, it was found that the cassette produced in the Court was not audible and, therefore, the transcription prepared by the prosecution is suspicious. Since demand of bribe is not proved and from the statement of the Complainant it is also established that the money was arranged by him for making arrangement of a surety and giving that money to the surety, mere recovery of tainted currency notes from the Appellant does not constitute any offence against him. Reliance was placed upon **G. Harinatha Rao v. State of Andhra Pradesh, (2014) 13 SCC 44**, **B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55** and **State through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560**.

6. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence. He drew attention of this Court to the presumption contained in Section 20 of the Act. It was submitted that the Appellant has not offered any explanation to rebut the said presumption. Therefore, the finding recorded by the Trial Court is based upon appreciation of the evidence available on record. Reliance was placed upon **State of Gujarat v. Navinbhai Chandrakant Joshi, (2018) 9 SCC 242**.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. In his Court statement, Complainant Sunil Kumr (PW3) has deposed that his friend Jagbandhu was arrested and sent to jail in a case of gambling. Thereafter, for his bail, he had gone to the office of City Magistrate and talked to the Appellant in this regard. The Appellant made a demand of Rs.2,000/- for making arrangement of bail for Jagbandhu and he also told him that the officer was also required to be paid. On this, he gave a sum of Rs.500/- to the Appellant. Since the Appellant was making demand of Rs.2,000/- itself and he did not want to give Rs.2,000/- to him, he submitted written complaint (Ex.P8). This witness has further deposed that thereafter he was given a tape recorder and a cassette in the office of Lokayukta and he was also directed to record conversation to be taken between him and the Appellant in the said tape recorder. Thereafter, he again visited the office of the Appellant. At that time also, the Appellant demanded money from him. According to this witness, he recorded the conversation took place between him and the Appellant and submitted the said tape recorder and the cassette in the office of Lokayukta. This witness has further deposed that thereafter he was called on the next day. He went to the office of Lokayukta with a sum of Rs.500/- and handed over the said money to the Superintendent of Police of the office of Lokayukta. According to this witness, thereafter, for trap proceeding, he alone went to the office of the Appellant and after giving money to the Appellant, he returned and thereafter the trap party entered the office of the Appellant. This witness has been declared hostile. After declaration of this witness as hostile, when leading questions were being put to him by the prosecution, he admitted that he had talked to the Appellant about bail of his friend Jagbandhu and the Appellant had told this witness that bail could

not be arranged in the sum below Rs.1,000/- and the Appellant also told that he will try further. During cross-examination, in paragraphs 40, 43, 44 and 47, this witness has categorically admitted that bail order of Jagbandhu was passed on 31.7.1999. On that day, he did not have any surety and, therefore, bail bond for Jagbandhu could not be furnished on that day itself. Thereafter, when this witness met with the Appellant, he himself told the Appellant that no surety could be arranged and he asked the Appellant to arrange a surety. On this, the Appellant told this witness that a sum of Rs.1,000/- - 2,000/- would be required for making arrangement of a surety and if will be able to arrange that sum then a surety could be arranged. This witness has further admitted that the Appellant had told him that a surety makes demand of Rs.1,000/- - 2,000/- for submission of bail bond. This witness has further admitted that the Appellant had asked him to arrange money for a surety, but he thought that the Appellant had demanded money for him and, therefore, he made the complaint in the office of Lokayukta. Again in paragraph 47, this witness has admitted that the Appellant had not made demand of Rs.500/- for him, but had demanded the same for making arrangement of a surety and he had given the sum of Rs.500/- to the Appellant for giving the same to the surety to be arranged.

9. Baiduram (PW2), one of the panch witnesses has also admitted in paragraph 7 that he had heard the conversation took place between the Appellant and the Complainant. At that time, the Complainant was telling to the Appellant that a surety was not being available for bail of his friend Jagbandhu and the Complainant asked the Appellant to arrange a surety for

Jagbandhu. On this, the Appellant had told that a surety usually makes demand of huge money. On being asked by the Complainant, the Appellant told him that a sum of Rs.1,000/- would be required to arrange a surety. The Complainant told that he could arrange only a sum of Rs.500/-. Thereafter, the Complainant put a sum of Rs.500/- in a carton-box kept beside the chair on which the Appellant was sitting and told him that he should adjust with this money because he was not able to arrange more amount and he went away.

10. Other members of the trap party, i.e., Ganesh Ram Mandavi (PW1), Ramlal Gangesh (PW8), R.S. Dhruw (PW9) and M.L. Negi (PW10) have admitted the fact that at the place where the Appellant was sitting in the office a curtain had fallen over the door. Therefore, at the time, when the Complainant handed over money to the Appellant, what talk took place between the Complainant and the Appellant, was not heard by them nor did they see giving money by the Complainant to the Appellant.
11. The transcription of the conversation took place between the Complainant and the Appellant was prepared by Ramlal Gangesh (PW8) vide Ex.P11. The cassette in which the conversation was recorded was produced by the prosecution before the Trial Court during recording of the statement of Complainant Sunil Kumar (PW3) and it was found by the Trial Court that the recording in the cassette was not audible.
12. On a minute examination of the above evidence, it is clear that Complainant Sunil Kumar (PW3) has not supported the case of the prosecution. According to his Court statement, his friend

Jagbandhu's bail order was passed and for arranging a surety for furnishing of bail bond, he had made a request to the Appellant and on his request, the Appellant had made demand of money for arranging a surety and the money which was given by the Complainant to the Appellant was for giving to the surety to be arranged. This fact is also corroborated by Baiduram (PW2), one of the panch witnesses. None of the other witnesses of the trap party heard the conversation took place between the Complainant and the Appellant nor did any of them witness giving money by the Complainant to the Appellant. Though conversation took place between the Complainant and the Appellant was recorded and its transcription was also prepared vide Ex.P11, as observed by the Trial Court itself, recording of the cassette from which the transcription was prepared, was not audible in the Court and, therefore, the said recording is suspicious. Looking to the fact that the Appellant was a staff (Assistant Grade II) of the office of City Magistrate, if the Complainant had made him a request for arranging a surety and he had talked about money for giving to the surety to be arranged, this cannot be said to be unusual and unnatural. From the entire evidence available on record, it is only established that tainted currency notes were recovered from the Appellant, but the Appellant had made demand for bribe in any manner, the prosecution has not been able to establish it. Though there is a presumption under Section 20 of the Act, the said presumption is rebuttable. From the evidence and the admissions made by the Complainant, it seems that the Complainant had made a request to the Appellant for arranging a surety and the money given by the Complainant to the Appellant was for giving to the surety to be arranged. Hence, in my considered view, no

presumption can be drawn against the Appellant under Section 20 of the Act because the money which was recovered from the Appellant was a bribe money has not been established in any manner. Thus, the finding of the Trial Court is not sustainable and deserves to be set aside.

13. 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.
14. 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