

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10-01-2020

Delivered on 12-02-2020

CRA No. 281 of 2001

- Mukesh Kumar Bajaj s/o/ Banshidhar Bajaj, aged about 33 years, resident of 17, Mahatma Gandhi Marg, Wagsi, Dist. Dewas, MP at present P.C. 14/5, Govt. Quarter, Kedarpur, Ambikapur, Dist. Surguja, Chhattisgarh.

---- Appellant

Versus

- The State of Chhattisgarh through District Magistrate, Bilaspur.

---- Respondent

For Appellant : Mr. Saurabh Dangi and Mrs. Aditi Singhvi, Advocate

For respondent/State : Mrs. Subha Shrivastava, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 2-3-2001 passed by the First Additional Sessions Judge and Special Judge (Prevention of Corruption Act, 1888), Ambikpur (CG) in Session Case No. 3 of 1998 wherein the said Court has convicted the appellant for the commission of offence under Section 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988") and sentenced him to undergo RI for three years and fine of Rs.5000/- with default stipulations.

2. As per version of prosecution, appellant was posted as Naib Tahsildar at Balrampur in the year 1988. One revenue case was pending before the appellant in which complainant Vinod Kumar Gupta was a party. For deciding the case the appellant demanded a sum of Rs.6000/- from the said complainant Vinod Kumar Gupta. The matter was reported to Superintendent of Police, Lok Ayukt, Bilaspur. After report a trap party was arranged and Rs.2000/- was recovered from the appellant which is alleged to have been passed on from the hands of the complainant Vinod Kumar Gupta to the appellant. The matter was reported and investigated. Appellant was charge-sheeted and convicted as mentioned above.

3 Learned counsel for the appellant would submit as under:

- i) Complainant Vinod Kumar Gupta (PW/1) has not supported the version of prosecution and acceptance of illegal gratification by the appellant is also not established, therefore, finding of the trial court is not sustainable.
- ii) Trap witness deposed regarding seizure of Rs.2000/- but the fact remains that the said amount is not proved to be bribe amount.
- iii) The trial court has overlooked the entire circumstances of the case and recorded finding on the basis of imagination which is

not permissible in law.

- iv) None of the trap members had ever given their personal search before entering into the apartment of the appellant's house, therefore, possibility could not be ruled out that money could be planted because money was recovered from a diary.
- v) The trial court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

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 Rs.6000/- from the complainant as illegal gratification. To substantiate the charge prosecution examined as many as nine witnesses.

7. Vinod Kumar Gupta (PW/1) is complainant. As per version of this witness, no demand was made by the appellant and he has not given

any application to the office of Lok Ayukt and no tape recorder was given to him for recording voice of the appellant. This witness has been subjected to leading question by the prosecution side, but nothing could be elicited in favour of prosecution. Y. Tirkey (PW/3), Head Constable Meena Ram (PW/5), Inspector B.K. Paveya (PW/6) are the trap witnesses. As per version of Head Constable Meenaram (PW/5) (para 9) 20 currency notes of Rs.100 denomination were seized from almirah in the house of the appellant. The point is whether this amount can be said to be amount of illegal gratification which is received by the appellant knowing it to be bribe amount. No shadow witness was produced in the present case regarding demand of illegal gratification. Complainant himself has not deposed that the appellant demanded illegal gratification and he received the amount knowing it to be illegal gratification, therefore, from the evidence the only thing which is established is that the amount was recovered from the almirah in the house of the appellant , but it is not established that the amount was received by the appellant knowing it to be illegal gratification.

8. The only question for consideration of this court is whether the appellant can be convicted for offence under Section 13 (1)(d) of the Act, 1988 even if no demand was made by him. 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.”

9. As demand by the appellant is not proved in the present case and it is also not proved that he received the amount knowing it to be bribe amount and in absence of evidence of receiving amount as bribe amount, presumption under Section 20 of the Act, 1888 is not available in the present case, therefore, charge under Section 13 (1) (d) read with Section 13(2) of the Act, 1988 is not established.

10. 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