

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 146 of 2009

State of Chhattisgarh, Through- Special Police Establishment,
Lokayukta Karyalaya, Bilaspur (C.G.) ---- **Appellant**

Versus

Santosh Kumar Asati S/o Ajay Prasad Asati, Aged about- 41 years
R/o Parijat Colony, Bilaspur (C.G.) ---- **Respondent**

For State petitioner : Mr. D.K. Tiwari, Dy.G.A.

For Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

03.02.2020

1. This appeal is preferred against the judgment dated 29.12.2003 passed by learned First Additional Judge, Bilaspur (C.G.), in Special Case No. 8/2002 wherein the said Court has acquitted the respondent for commission of offence under Sections 7 & 13(1)(d) read with Section 13(2) of Prevention of corruption Act, 1988 on the allegation that he demanded bribe of Rs. 7,000/- from the complainant Shyamlal.
2. In the present case, name of the complainant is Shyamlal. As per version of the prosecution, the respondent demanded a sum of Rs. 7000/- as illegal gratification for clearing the valuation report of the complainant Shyamlal. Shyamlal is contractor for construction of road in village Bhilmi and respondent was posted as Sub-engineer who was authorized to evaluate the work. The said complainant Shyamlal reported the matter to the Superintendent of Police, Bilaspur. As per Ex.P-1. Thereafter, one tap was given by the authority to record voice of respondent and after that one trap was

arranged against the respondent. It is alleged that 70 Nos. of currency notes of Rs.100/- denomination with Phenolphthalein powder was given to the complainant to tender the same to the respondent which was received by the respondent. The matter was investigated and appellant was charge-sheeted after completion of trial he was acquitted by the trial Court as mentioned above.

3. Learned counsel for the appellant submits that trial Court has not evaluated the evidence properly because the trap witnesses have proved the acceptance of currency notes by the respondent. Therefore, finding of the trial court is liable to set-aside.
4. The question for consideration of this Court is whether respondent demanded illegal gratification from the complainant namely Shyamlal and whether he received the amount knowing it to be amount of illegal gratification. Shyamlal who is complainant in the present case has not supported version of the prosecution. As per version of this witness no conversation took place between him and the respondent and no demand was subject matter of conversation. This witness is subjected to leading questions by prosecution side but demand by the respondent and acceptance of the amount is not proved by his evidence.
5. Though, trap witness is S.P. Bira (PW-2), Vijay Tirkey (PW-4), Minaram (PW-9), Ashok Kumar Dubey (PW-12), Shyamdas-Deputy Superintendent of Police (PW-15), N.K. Tiwari (PW-

16) deposed before the trial Court that when hand of the respondent was dipped in one solution of the Sodium Carbonate it turned pink but from the evidence of all these witnesses, it is clear that they are not the shadow witness regarding demand and acceptance of illegal gratification. In absence of any shadow witness regarding demand and acceptance of illegal gratification demand by the respondent is not established. Again, it is not established that any amount was received by the respondent knowing it to be illegal gratification. Mere seizure is not sufficient to establish that respondent received the amount knowing it to be bribe amount. As the complainant Shyamlal himself has not supported the prosecution case from any angle. The evidence against the respondent is not establishing demand and acceptance of his part. Therefore, the trial Court recorded finding of the acquittal of the respondent.

6. Looking to the totality of evidence, finding recorded by the trial Court is one of the plausible view if two views are possible, the view which is in favour of respondent/accused should be preferred.
7. In view of the legal position, it is not a case where interference of this Court is required with the judgment of the trial Court.
8. Accordingly, the acquittal appeal stands dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge