

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20.01.2020

Delivered on 12.02.2020

Criminal Appeal No.430 of 2003

Bhawani Shankar Sao, S/o. Dauram Sao, aged about 31 years, Naib Tahsildar, Basna, R/o. Sarkho Tahsil & Distt. Janjgir (CG)

---- Appellant**Versus**

The State of Chhattisgarh, Through Vishesh Police Sthapana Lokayukt Office, MP Bhopal, Branch Raipur (CG)

---Respondent

For the appellant	: Shri YC Sharma, Advocate
For the respondent/State	: Shri Dinesh RK Tiwari, Dy. Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 01.4.2003 passed by First Additional Sessions Judge/Special Judge, under the Prevention of Corruption of Act, 1988 (for short 'the Act 1988'), Raipur (Chhattisgarh) in Special Session Trial No. 08/2000 wherein the said Court convicted the appellant for commission of offence under Section 7 and 13(1)(d) read with Section 13(2) of the Act, 1988 and sentenced to undergo rigorous imprisonment for 02 years and to pay fine of Rs.2,000/- and RI for 05 years and to pay fine of Rs.5000/- respectively with default stipulations.
2. In the present case, name of the complainant is Kadam Das. As per the version of prosecution, said Kadam Das had filed

an application before the appellant, who was posted as Naib Tahsildar at Basna, for appointment as Kotwar and the appellant demanded illegal gratification to the tune of Rs.5,000/-. Thereafter the complainant filed an application before the Superintendent of Lokayukta Raipur on 24.11.1999. One tape recorder was provided by the office of the said Superintendent and voice of the appellant was recorded in the same. A trap party was arranged and on trap it is found that the appellant received Rs.2,000/-. Thereafter the matter was reported and investigated and after completion of the trial, the said Court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) From the statement of complainant Kadam Das (PW-2) it is established that demand was made in presence of one Manoj Patel but said Manoj Patel rebutted the version of the complainant and as per the version of Manoj Patel, clerk of the office of the appellant namely Parsumram demanded illegal gratification.

(ii) From the evidence of Manoj Patel, it is clearly established that no demand was made by the appellant. Version of complainant Kadam Das is rebutted by the version of Manoj Patel, therefore, demand of illegal gratification by the appellant is not established.

(iii) The tape recorder was not operated in the Court, therefore, same is given to Kadam Das for satisfaction of the investigating officer whether to proceed with the case and

investigate the matter or to drop the proceedings. Therefore, the said tape recorder is not evidence of the case and no finding can be arrived at on the basis of said tape recorder.

(iv) Though the trap witnesses namely Shyam Sunder Rao (PW-5), Narayan (PW-6), Dilip Singh Rathore (PW-8), Basant Kumar Dhruv (PW-9) and RK Rai (PW-11) deposed that when the hands of the appellant was subjected to sodium carbonate solution, it turned pink, but from the evidence of Manoj Patel it is clearly established (para 9) that when the appellant moved to wash room to ease himself, complainant Kadam Das put the currency notes in the polythene bag which was hanging on the motor cycle of the appellant which shows that the appellant did not accept any amount from the complainant, therefore, Sodium Carbonate test with the appellant has no bearing with acceptance of the amount of illegal gratification. As the demand and acceptance is not established in the present case, Section 20 of the Act, 1988 has no application in the present case and no presumption can be drawn against the appellant.

(v) The trial Court has overlooked the material evidence, therefore, finding recorded by the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment 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 with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. The first question for consideration before this Court is whether the appellant demanded illegal gratification to the tune of Rs.5,000/- from complainant Kadam Das (PW-2). As per the version of Kadam Das, he had gone to the office of the appellant with Manoj Patel where he demanded money to the tune of Rs.5,000/- but version of this witness is rebutted by version of Manoj Patel (PW-3) (wrongly mentioned as PW-2 in the deposition). As per the version Manoj Patel, he met with clerk of the appellant's office namely Parsuram and Parsuram demanded money for appointment of Kadam Das as Kotwar. This witness clearly deposed (para 3 & 7) that demand was not made by the appellant, but it was made by clerk of the appellant's office. No other witness is shadow witness regarding demand. Version of the complainant is rebutted by version of Manoj Patel, therefore, demand by the appellant regarding appointment of Kotwar is not established.

7. Second question for consideration before this Court is whether the appellant accepted currency notes to the tune of Rs.2,000/- knowing it to be illegal gratification. As per the version of Kadam Das (PW-2) (para 7), he gave currency notes to Manoj Patel and Manoj Patel gave currency notes to the appellant. But Manoj Patel deposed (para 9) that the appellant after leaving his motor cycle went to washroom to ease himself and in the meantime, complainant Kadam inserted currency notes in

polythene bag hanging in the motor cycle of the appellant. From the evidence of Manoj Patel it is established that currency notes were inserted in the polythene bag in absence of the appellant. It means neither the currency notes were tendered nor it was received by him. The trap witnesses as mentioned above have only deposed regarding recovery of amount and test of sodium carbonate solution, but their evidence is not sufficient to establish the acceptance because from the evidence of Manoj Patel who accompanied the complainant, the currency notes were inserted in the polythene bag in absence of the appellant. Therefore, it is difficult to hold that the currency notes were received by the appellant knowing it to be illegal gratification.

8. Now the question for consideration of this Court is whether the appellant can be convicted for the offence under Section 7 and 13(1)(d) read with Section 13(2) of the Act, 1988 in absence of demand and acceptance by the appellant. 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, presumption under Section 20 of the Act 1988 is not available in the present case. On overall assessment of the evidence, finding of conviction against the appellant under Section 13 (1)(d) read with Section 13(2) of the Act, 1988 is not sustainable.

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 from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE