

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings Through Video Confering****CRA No. 432 of 2004**

1. Vijay Kumar Bhandari S/o Sardari Lal Bhandari, aged about 51 years, District Manager, Civil Supplies Corporation, Raipur, R/o Civil Supplies Corporation, Paryavas Bhawan, Jail Road, Bhopal (MP)

{Vide order dated 16.2.2018 of this Court, appeal in respect of this appellant stood abated due to his death on 19.7.2013.}

2. Darshu Ram Dhruve, S/o Videshi Ram Dharshu, aged about 30 years, Assistant Account Officer, Civil Supplies Corporation, Raipur, R/o Devendra Nagar, Raipur (CG)

---- Appellants

Versus

- State Of Chhattisgarh through Police Station, Special Police Establishment (Lokayukta), Bhopal, M.P. Unit-Raipur (CG)

---- Respondent

For Appellant No.2 : Shri Yogesh Pandey, Advocate.
For Respondent/State : Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/10/2020

1. This appeal is directed against the judgment of conviction and order of sentence dated 1.5.2004 passed by the Special Judge/First Additional Sessions judge, Raipur in Special Case No.01/2001 convicting the accused persons as under:

Conviction	Sentence
<u>Accused – Vijay Kumar Bhandari</u> Under Section 7 of Prevention of Corruption Act, 1988	R.I. for two years, fine of Rs.2,500/-, in default to undergo six months' R.I.

Section 13(1) read with 13(2) of Prevention of Corruption Act, 1988	R.I. for six years, fine of Rs.5,000/-, in default to undergo two years' R.I.
<u>Accused – Darshulal Dhruve</u> Under Section 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988	R.I. for six years, fine of Rs.5,000/-, in default to undergo two years' R.I.

2. Case of the prosecution, in brief, is that on 1.8.2000 a complaint (Ex.P/1) was made by Manoj Jain, proprietor of Vidysree Traders Rice Mill, to the Superintendent of Police, Lokayukt, Raipur against accused No.1 Vikay Kumar Bhandari, District Manager of Civil Supplies Corporation, Raipur, alleging therein that he had executed an agreement with Civil Supplies Corporation, Raipur for custom milling of 1400 MT paddy and submitted transporation as well as milling bill with the said corporation. According to the complainant, a total sum of Rs.44,918/- i.e. deduction in transporation bill of Rs.26,825/- and earlier deduction of Rs.18,153/-, was payable by the corporation to him and for payment of said amount, the District Manager (V.K. Bhandari) demanded illegal gratification of Rs.5000/- from the complainant. Since the complainant did not want to give bribe to V.K. Bhandari, he made the above complaint against him.

3. Based on the above complaint, initially FIR (Ex.P/32) under Crime No.0/2000 was registered against V.K. Bhandari on 1.8.2000 in Special Police Establishment of Bhopal at Raipur under Section 7 of the Prevention of Corruptoin Act, 1988 and later the numbered FIR bearing Crime No.127/2000 was

registered against him vide Ex.P/33.

4. On the said complaint, Preliminary Enquiry No.18/2000 was registered and for verification of the complaint, on the same day i.e. 1.8.2000 a tape recorder with blank cassette was given to the complainant and he was instructed to record the conversation between Vijay Kumar Bhandari and himself regarding demand of bribe and thereafter, inform them about the same vide Ex.P/2. After recording the conversation with V.K. Bhandari regarding demand of bribe, on 1.8.2000 the complainant, as instructed, submitted the said tape recording with the Lokayukt office, Raipur vide Ex.P/3 and transcription of the said recording was duly made. Thereafter, Preliminary Proceeding Panchanama was prepared vide Ex.P/6 whereby trap party was constituted, the numbers of notes of 100 denomination i.e. total Rs.2500/- produced by the complainant which was to be given as bribe to V.K. Bhandari were noted down, phenolphthalein powder was applied on the said currency notes, which were kept in the left pocket of his shirt with the instruction to give it to V.K. Bhandari only on his demand and thereafter, signal to the trap party by touching his head. The complainant was explained the procedure of chemical reaction of sodium carbonate and phenolphthalein through demonstration.
5. The trap party then proceeded for the place of occurrence. First the complainant along with Panch witness SR Sori went to the State Civil Supplies Corporation and the remaining members of the trap party took their respective position. The complainant after conversation with V.K. Bhandari regarding bribe amount, on

being demanded by Bhandari gave him the tainted amount of Rs.2500/-. However, accused V.K. Bhandari took out an envelope from his drawer and asked the complainant to keep the said amount in that envelope. After taking that envelope, V.K. Bhandari handed over the same to accused Darshuram Dhruve (present appellant), Assistant Account Officer for keeping the same. On signal being given by the complainant, the trap party reached there, hands of the accused persons and the complainant were separately washed in the sodium carbonate solution, on which the colour of the solution turned pink which were separately kept in vials and sealed.

6. On the memorandum (Ex.P/12) of accused Darshuram Dhruve, the said bribe amount of Rs.2500/- was recovered from his possession. On pocket of fullpant of accused Darshuram Dhruve being washed in the sodium carbonate solution, its colour turned pink, which was separately kept in a vial and sealed. When the tainted notes were also washed in the solution, the colour of the solution turned pink and it was sealed. During the said proceedings, certain documents pertaining to the case of the complainant were seized, statements of the witnesses were recorded, the numbered FIR was registered and the seized articles were sent to FSL. Accordingly, the Spot Proceedings Panchanama was prepared vide Ex.P/7. FSL report (Ex.P/31) was found positive in respect of the seized articles sent for examination.

7. Spot map Ex.P/9 was prepared by PW-2 Shatrughan Chandrakar, Patwari. Transcriptions of the conversation between

the complainant and VK Bhandari are Ex.P/10 & P/17. Appointment order dated 3rd June, 1974 of V.K Bhandari on the post of Junior Assistant was seized vide Ex.P/22/2 and other relevant documents of his service book were seized vide Ex.P/22/4C. Copy of the appointment order dated 28.6.1997 of accused/appellant Dashrual Dhruve was seized vide Ex.P/23C and other relevant documents of his service book were seized vide Ex.P/24C & 25C. Sanction for criminal prosecution of the accused Darsulal Dhruve and VK Bhandari was granted vide orders dated 19.1.2001 (Ex.P/27 & P/28 respectively).

8. After completing investigation, charge sheet against the accused persons was filed under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act and accordingly, charges were framed by the trial Court which were denied by the accused persons and they prayed for trial.
9. In order to prove its case, the prosecution examined as many as 10 witnesses. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, the accused persons examined DW-1 Shivaji Thape and DW-2 Kishan Chourasiya.
10. The trial Court after hearing counsel for the respective parties and considering the material available on record convicted and sentenced the accused persons as mentioned in para 1 of this judgment. As accused VK Bhandari died on

19.7.2013, therefore, vide order dated 16.2.2018 of this Court, the present appeal stood abated in respect of accused/appellant VK Bhandari and now it remains to be considered only in respect of accused/appellant Darshu Ram Dhruve.

11. Learned counsel for the accused/appellant Darshu Ram Dhruve submits that the appellant had no authority for passing the bill of the complainant, he never demanded or received any illegal gratification from the complainant. There was no *mens rea* on the part of the present appellant. As per the transcript of the tape recording vide Ex.P/10 and P/17, no demand was made by the present appellant nor any amount was received by him from the complainant. It is accused VK Bhandari who after receiving the bribe amount from the complainant, handed over the same in an envelope along with other posts (*Dak*) to the present appellant for keeping the same in his custody. The FIR (Ex.P/32 & P/33) and the written complaint (Ex.P/1) are also lodged against only one accused by the complainant i.e. VK Bhandari.

12. He submits that from the evidence of the complainant and other prosecution witnesses it is clear that room of the present appellant where he was working is different than the room where VK Bhandari was sitting to whom the complainant gave the bribe amount. As per Spot Proceeding Panchanama (Ex.P/7) prepared by the Investigating Officer, it is also mentioned that it is accused VK Bhandari who demanded money from the complainant and after receipt of the same, handed over the money in an envelope to the present appellant along with other posts for keeping the same and immediately thereafter, the amount was recovered

from the computer room of the present appellant. The complainant (PW-1) has also admitted the said fact in his deposition.

13. Learned counsel submits that PW-3 Sonaram Sori, a member of the trap team, has admitted in para 5 of his deposition that when accused VK Bhandari was asked about the bribe by the trap team, initially he expressed ignorance about the same and later said that the clerk of the office would have taken the envelope along with other posts and then the members of the trap team along with the complainant went to the room of the present appellant. In para 12 PW-3 also admits that the complainant did not inform him about handing over of the said envelope by VK Bhandari to the present appellant. In para 13 he admits that when they reached the room of accused VK Bhandari, the present appellant was not there. In para 28 he admits this fact that on being asked by the team, the present appellant brought all the envelopes and expressed his ignorance about the envelope containing money. Further, when the complainant informed the trap team about the place where the said envelope was kept, then the present appellant brought that envelope and on being opened, the bribe amount was found in that envelope. Thus, from the overall evidence, it is clear that the present appellant was not having any knowledge about the bribe amount being kept in the envelope handed over to him by main accused VK Bhandari. There was no *mens rea* on his part, neither any demand of bribe was ever made by him from the complainant nor any bribe was received from him. As such, the

trial Court has wrongly convicted and sentenced by the present appellant by the impugned judgment which is liable to be set aside.

14. Learned counsel for the appellant has placed reliance on the judgments in the matter of ***Mukhtiar Singh (since deceased) Through his LR Vs. State of Punjab, 2017(8) SCC 136; B Jayaraj Vs. State of AP, (2014) 13 SCC 55; and N Sunkanna Vs. State of AP, (2016) 1 SCC 713.***

15. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the present appellant by the impugned judgment which calls for no interference by this Court.

16. Heard learned counsel for the parties and perused the material available on record.

17. It is not disputed by counsel for the parties that the present appellant was working as a public servant in Civil Supplies Corporation on the post of Assistant Account Officer at the relevant time. The above fact has also been proved by PW-7 SS Bhatt, Manager, Quality Control, CG State Civil Supplies Corporation, Raipur vide Ex.P/23 to P/25. His evidence remained unchallenged in the cross-examination. Thus, from the above oral and documentary evidence, it stands proved that on the date of incident the present appellant was working as Assistant Account Officer, a public servant, in the office of Civil Supplies Corporation, Raipur.

18. Now it is to be seen whether sanction for criminal prosecution of the appellant was duly granted. Vide orders dated 19.1.2001 (Ex.P/27 & P/28 respectively), sanction for criminal prosecution of the accused Darsulal Dhruve and VK Bhandari was granted under Section 19 of the Prevention of Corruption Act by Praveer Krishna, Managing Director, MP State Civil Supplies Corporation, Head Office at Bhopal. PW-8 NS Gaur who was posted as General Manager (Administration) at the relevant time in Civil Supplies Corporation, Bhopal, has duly proved the signature of the sanctioning authority. Thus, sanction for criminal prosecution of the appellant stands proved beyond all reasonable doubt.

19. It is not in dispute that a written complaint Ex.P/1 was made by the complainant PW-1 Manoj Jain against deceased accused VK Bhandari that he was demanding illegal gratification of Rs.5,000/- for passing his bill for a total sum of Rs.44,918/-. This witness has proved the complaints of Ex.P/1 and P/3 as also Spot Proceeding Panchanama Ex.P/7 and seizure of audio cassette containing conversation between VK Bhandari and the complainant of giving the bribe amount to him vide Ex.P/8.

20. PW-2 Shatrughan Chandrakar, Patwari, prepared the spot map Ex.P/9 and proved the same. PW-3 Sona Ram Sori, Assistant Commercial Officer, a member of the trap team, has proved the documents from Ex.P/3, Ex.P/5 to P/17. Likewise, PW-4 Abdul Malik, Assistant Commercial Tax Officer, a member of the trap team, has also proved the documents from Ex.P/3 to

P/17.

21. PW-5 JS Jangi, Inspector in Special Police Establishment, Lokayukt, Raipur, a member of the trap team, has also proved the documents of Ex.P/10 and P/17. PW-6 Ashok Kumar Sinha, Accountant in CG State Civil Supplies Corporation, has proved the seizure of Ex.P/16 and P/21. PW-7 SS Bhatt, Regional Manager, MP State Civil Supplies Corporation, Raipur has proved the documents of Ex.P/22 to P/25 and Ex.D/8 to D/13 & D/15.
22. PW-8 NS Gaur, who was working as Managing Director in Civil Supplies Corporation, Bhopal, has proved the sanction granted by Praveer Krishna, Managing Director, vide Ex.P/26 to 28. PW-9 Rakesh Bhatt, Inspector in Special Police Establishment Lokayukt, Raipur, conducted part of the investigation and seized certain documents relating to service record of the accused persons vide Ex.P/22 to P/25 and sent the seized solutions for examination to FSL vide Ex.P/29. PW-10 RK Rai, who was working as Inspector in Lokayukt Office, Raipur, at the relevant time, has proved Ex.P/1 to P/8, P/11 to P/17, P/32 to P/35.
23. DW-1 Shivaji Thape, who was working as Assistant Manager in Civil Supplies Corporation, Raipur, and DW-2 Kishan Chourasiya, have also admitted that trap proceedings were conducted on 1.8.2000 in the office.
24. In this case, the incident took place on 1.8.2000 and the appellant has been convicted under Section 13(1)(d) read with

13(2) of Prevention of Corruption Act, 1988. Section 13(1)(d) reads as under:

“13. Criminal misconduct by a public servant. - (1) A public servant is said to commit the offence of criminal misconduct, -

(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or”

25. Thus, a bare reading of the aforesaid provisions makes it clear that for holding a person guilty under Section 13(1)(d), the prosecution is required to prove that the person while holding the office as a public servant, by misusing his position obtained by corrupt or illegal means for himself or for any other person any valuable thing or pecuniary advantage.

26. In the present case, as reflected from the evidence on record, the complaint (Ex.P/1 & P/3) were lodged by complainant Manoj Jain (PW-1) only against deceased accused VK Bhandari, District Manager, Civil Supplies Corporation, Raipur, that he was demanding illegal gratification of Rs.5,000/- for passing the bill of the complainant of Rs.44,918/-. The FIR (Ex.P/32 & P/33) have also been lodged only against VK Bhandari. As per the transcript

of the tape recording vide Ex.P/10 and P/17, no demand was made by the present appellant nor any amount was received by him from the complainant. The appellant was working as Assistant Account Officer and the prosecution has not adduced any evidence to prove that he was having any authority to pass the bill of the complainant.

27. From the evidence of complainant and other prosecution witnesses as also from the spot map Ex.P/9, it is proved that the present appellant was sitting in another room whereas deceased accused VK Bhandari was sitting in another room where he obtained bribe from the complainant. As per Spot Proceeding Panchanama (Ex.P/7) prepared and proved by the Investigating Officer, it is clear that accused VK Bhandari demanded money from the complainant and after receipt of the same, handed over the money in an envelope to the present appellant along with other posts for keeping the same. The complainant (PW-1) has also admitted the said fact in his deposition. As per evidence of PW-3 Sonaram Sori, a member of the trap team, when accused VK Bhandari was asked about the bribe by the trap team, initially he expressed ignorance about the same and later said that the clerk of the office would have taken the envelope along with other posts and then the members of the trap team along with the complainant went into the room of the present appellant. In para 13 he admits that when trap team reached the room of accused VK Bhandari, the present appellant was not there and in para 28 he admits this fact that on being asked by the team, the present appellant brought all the envelopes and expressed his

ignorance about the envelope containing money. It is only when the complainant informed the trap team about the place where the said envelope was kept, the present appellant bought that envelope and on being opened, the bribe amount was found in that envelope. Thus, from the evidence, it clearly appears that the present appellant had no knowledge about the bribe amount being kept in the envelope handed over to him by VK Bhandari and the prosecution has failed to prove *mens rea* on the part of the appellant.

28. So far as FSL report being positive in respect of the fullpant pocket of the appellant is concerned, it has nowhere come in the evidence of either of the prosecution witnesses that the envelope in question or the bribe amount was kept by the appellant in his fullpant pocket. PW-10 RK Rai, has admitted that phenolphthalein powder was not applied on the said envelope as bribe amount was kept in the envelope given by VK Bhandari and that the envelope was not washed with the sodium carbonate solution. It appears that while the complainant on being asked by deceased accused VK Bhandari was keeping the bribe amount in the envelope, the phenolphthalein powder applied on the said bribe amount would have come in contact with the envelope and the present appellant after receiving that envelope would have inserted his hand into his fullpant pocket and that is why when the said pocket was washed, colour of the solution turned pink. Therefore, in the facts and circumstances of the case, the FSL report in respect of fullpant of the appellant is of no help to the prosecution.

29. So far as presumption under Section 20 of the PC Act is concerned, in the matter of **Mukhtiar Singh** (*supra*), the Hon'ble Supreme Court has held that till demand of bribe is established by cogent proof, the accused should be considered innocent despite recovery. In 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. A presumption under Section 20 would arise only on such proof of demand.

30. Likewise, in the matter of **B. Jayaraj** (*supra*), the Hon'ble Supreme Court held that demand of bribe is a condition precedent, mere recovery of currency notes cannot constitute the offence under Section 7. Conviction is not possible unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. Regarding presumption under Section 20, the Hon'ble Supreme Court held that mere possession and recovery of currency notes shall not be conclusive regarding offence under Section 13(1)(d)(i)(ii) as corrupt means or abuse of position by public servant to gain pecuniary advantage cannot be held established in absence of demand. Presumption under Section 20 is not applicable to offence under this section, it only applies to offence under Section 7.

31. Similarly, in the matter of **N Sunkanna** (*supra*), the Hon'ble Supreme Court has held that in absence of proof of the

demand for illegal gratification, the use of corrupt and illegal means or abuse of position as public servant to obtain any valuable thing or pecuniary advantage, cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 that such gratification was received for doing or forbearing to do any official act. Unless there is a proof of demand of bribe, the proof of acceptance will not follow.

32. If the facts and evidence of the present case are examined in light of the aforesaid principles of law and the provisions of Section 13(1)(d) of the PC Act, it emerges that the prosecution has utterly failed to prove that there was any demand or receipt of illegal gratification from the complainant Manoj Jain (PW-1) either for himself or for any person. The evidence goes to show that at the time of transaction between VK Bhandari and the complainant, the appellant was sitting in a different room, the envelope containing the tainted bribe amount was handed over to the appellant by deceased accused VK Bhandari in an envelope along with other posts for keeping the same in his custody. The prosecution has failed to prove any *mens rea* on the part of the appellant. As there was no demand or acceptance on the part of the appellant, presumption under Section 20 of the PC Act can not be drawn against him.

33. On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubt against the appellant and as such, his conviction under Section 13(1)(d) read with 13(2) of the PC

Act being not sustainable is liable to be set aside.

34. In the result, the appeal is allowed. The appellant is acquitted of the charge under Section 13(1)(d) read with 13(2) of the PC Act. The appellant is on bail, therefore, his bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)

Judge

Khan