

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 16.01.2020

Delivered on 12.02.2020

Criminal Appeal No.1281 of 2003

Shashikant Sharma, S/o. Ghanshyam Prasad Sharma,
aged 35 years, Assistant Grade-3, Office of District
Education Officer, Mahasamund (CG) Permanent Resident
of Amapara Dhobi Mohalla, PS Azad Chowk Raipur (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Special Police
Establishment, Lokayukt Office, Unit Bhopal (MP)

---Respondent

For the appellant : Shri YC Sharma, Advocate
For the respondent/State : Smt. Smita Jha, Panel Lawyer

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

1. The appeal is directed against judgment dated 03.12.2003 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. 08/2002 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 01 year and to pay fine of Rs.500/- and RI for 04 years and to pay fine of Rs.1000/- respectively with default stipulations.

2. In the present case, name of the complainant is Ashwani Maheshwar (PW-6). As per the version of the prosecution,

complainant Ashwani Maheshwar is the resident of village Sindhora and due to necessity of mark sheet, he had given one application to the office of the District Education Officer on 15.10.2001 and deposited fees as prescribed for said certificate. The appellant was posted as Asst. Grade-III in the office of District Education Officer, Mahasamund and he demanded Rs.500/- for issuance of certificate as illegal gratification. The matter was reported to the Superintendent of Lokayukta and after preliminary enquiry one trap party was arranged and the appellant was caught with two currency notes of 100 denomination. The matter was investigated and the appellant was charge sheeted and after completion of the trial, he was convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The complainant himself has not deposed that the appellant demanded any amount from him.

(ii) As per the version of Ashwani Maheshwar (PW-6), one peon namely Lakhan demanded Rs.500/- from him. From the evidence of the complainant himself, demand of illegal gratification is not established.

(iii) From the evidence of RK Shivani (PW-7) (para 3) and statement of Navin Shankar Choubey (PW-9) (para 5), both hands of the appellant were caught during trap by one Dy.SP Rajput and one Inspector Khare and both officers have not washed their hands before holding the hands of the appellant, therefore, there is every possibility that phenolphthalein powder may transfer from their hands to the hands of the appellant, therefore, sodium

carbonate solution test with the appellant, i.e. when his hands were washed with the Sodium Carbonate Solution it turned pink, has no bearing with acceptance of the amount of illegal gratification.

(iv) As the demand and acceptance is not proved, presumption under Section 20 of the Act, 1988 is not acceptable in the present case, therefore, finding of conviction recorded by the trial Court is not sustainable.

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.500/-from complainant Ashwani Maheshwar (PW-6). From the evidence of Ashwani Maheshwar itself it is clear that he met with the peon of the Office of the District Education Officer namely Lakhan Lal Sahu and Lakhan Lal Sahu demanded Rs.500/- for issuance of required certificates. This witness further deposed (para 4) that demand was made by Peon Lakhan Lal Sahu. From his entire evidence, it is not established that any demand was made by the appellant. If the demand is made by Peon Lakhan Lal, it cannot be said that it was the demand of the appellant.

Therefore, it is not established that the demand was made by the appellant.

7. Now the question for consideration before this Court is whether the appellant received any amount knowing it to be illegal gratification. RK Shivani (PW-7) and Navin Shankar Choubey (PW-9) deposed before the trial Court that two persons caught the hands of the appellant and thereafter the hands of the appellant were dipped in the Sodium Carbonate solution which turned pink in colour. There is nothing on record that two persons have washed their hands before holding the hands of the appellant. Therefore, possibility cannot be ruled out that Phenolphthalein powder may be transmitted from their hands to the hands of the appellant.

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 if the demand on his part is not established. 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 established and further acceptance of amount knowing it to be illegal gratification is not proved, Section 20 of the Act, 1988, has no application 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