

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.354 of 2010**Judgment Reserved on : 5.12.2019Judgment Delivered on : 5.3.2020

Ali Mohammad Khan, son of Janab Sheikh Daud, aged about 48 years, Caste Muslim, Profession Government Servant, R/o Primary Health Centre, Lohandiguda, presently Posted at Tokapal, District Bastar (Chhattisgarh), Permanent Address Dharampura, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through Anti Corruption Bureau, Branch Jagdalpur, District Bastar, Chhattisgarh (Earlier Thana Bhopal, State of Madhya Pradesh)

--- Respondent

 For Appellant : Shri Anurag Dayal Shrivastava and Shri Alok Dewangan, Advocates
 For Respondent : Shri Ajay Kumrani, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. JUDGMENT**

1. This appeal is directed against the judgment dated 4.5.2010 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act'), Bastar at Jagdalpur in Special Case No.9 of 2003, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation

2. Case of the prosecution, in brief, is that at the relevant time, the Appellant was posted as a Lower Division Clerk at Primary Health Centre, Lohandiguda, District Bastar. At that time, Complainant Urmila Bijlekar (PW1) was posted as a Mahila Bahu-Uddeshiya Swasthay Karyakarta at Prathmik Swasthay Kendra, Anjar, Sector Taragaon, Lohandiguda, District Bastar. According to the case of the prosecution, payment of the Complainant for the period from April, 2002 to June, 2002 was not done and her leave surrender amount for March, 2002 was also not paid. Work of preparation of pay-bills was of the Appellant. The Complainant approached the Appellant and the C.M.H.O. many times for preparation of her bill for payment, but they did not pay attention. On 22.7.2002, the Complainant went to the house of the Appellant and talked about for payment. The Appellant demanded bribe of Rs.500/- for early preparation of her bill for payment and asked her to come at his house next day in the evening. Since she did not want to give him the bribe money, she made a written complaint (Ex.P1) to the Lokayukta. On the basis of Ex.P1, First Information Report (Ex.P26) was registered. Inspector R.S. Dhruw (PW14A) called panch witnesses, namely, Ravendra Kumar (PW3) and Deepak Sharma (not examined). Both the panch witnesses were introduced with the Complainant and they also read the complaint (Ex.P1). The Complainant submitted 5 currency notes each of Rs.100/- in presence of the panch witnesses for trap proceedings. Constable Ramsevak Sinha (PW5) smeared phenolphthalein powder on those 5 currency notes and thereafter kept them in the purse of the Complainant. A demonstration of trap proceedings was given to the Complainant. Head Constable Ramlal Gangesh (PW7) prepared a solution of sodium carbonate and filled the same

in a bottle and sealed the same. Two specimen packets of sodium carbonate were also prepared and sealed. A panchnama of preliminary action was prepared vide Ex.P5. The trap party proceeded towards the house of the Appellant. On the way, the Complainant made a telephonic call at the house of the Appellant. She came to know that the Appellant was in his office. Then the trap party proceeded towards the office of the Appellant. At about 3:20 p.m., the Complainant entered the office room of the Appellant and told him that she had come along with the bribe money of Rs.500/-. The Appellant demanded the money. She gave him the bribe money. The Appellant wrapped the bribe money and kept in the pocket of his shirt. After sometime, both the Complainant and the Appellant came out and they started talking with each other standing near the vehicle of the Appellant. Then the Complainant gave a signal to the trap party. The trap party reached the spot. The Complainant told that the Appellant had kept the bribe money in the pocket of his shirt. Then the Appellant, on getting introduced with the trap party, trembled and took out the bribe money from his pocket. The trap party caught him. Thereafter, hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. Numbers of the bribe money, i.e., the currency notes recovered from the Appellant were compared with the numbers already noted in the preliminary panchnama. The numbers matched. The recovered currency notes were also dipped into a solution of sodium carbonate on which colour of the solution turned into pink. Shirt of the Appellant was also dipped into a solution of sodium carbonate on which colour of the solution turned into pink. Seizures were made and the Appellant was arrested. The seized articles were sent to the

Forensic Science Laboratory vide Ex.P30. FSL report is Ex.P31, which is positive. Sanction for prosecution (Ex.P38) was obtained. Other material documents were collected. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him.

3. In support of its case, the prosecution examined as many as 20 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. No witness has been examined in defence.
4. On completion of the trial, the Trial Court, vide the impugned judgment, convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. Both demand and acceptance of bribe money are not proved. The prosecution has neither established that there was demand of bribe nor has established acceptance of illegal gratification. Statement of Complainant Urmila (PW1) suffers from material contradiction. Apart from the statement of the Complainant, the prosecution has failed to examine any other witness regarding demand of bribe. From the evidence on record, it is established that the Appellant had already prepared the bill of the Complainant and amount was deposited in the Primary Health Centre, then how the Appellant demanded illegal gratification for the work which was not in his hand is well within the knowledge of the Complainant. Independent witnesses Pradeep Kumar Banik (PW19), Sursari Prasad Tripathi (PW20) and N.P. Bhattacharya (PW10) were

present on the spot. In their Court statements, N.P. Bhattacharya (PW10) and Sursari Prasad (PW20) have categorically deposed that at the time of incident, the Complainant had taken out something from her purse and kept the same in the pocket of the shirt of the Appellant and had gone out immediately thereafter. Behind her, the Appellant had also gone out saying that what was she doing, he did not want the same. Thus, from the above, it is also established that the Appellant had not accepted any amount as illegal gratification. Though N.P. Bhattacharya (PW10) has been declared hostile by the prosecution, Sursari Prasad (PW20) has not been declared hostile. Therefore, ignoring this fact, the Trial Court has wrongly convicted the Appellant. From the entire evidence, it is well established that neither the demand nor the acceptance has been proved. Therefore, the Appellant is entitled to get acquittal.

6. Per contra, Learned Counsel appearing for the Respondent opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. It is not in dispute that according to the post/designation of the Appellant, he was doing work of preparation of bills for payment. It is also not in dispute that payment of the Complainant for the period from April, 2002 to June, 2002 was not done and her leave surrender amount for March, 2002 was also not paid.
9. With regard to the payment of bribe money, Complainant Urmila (PW1) has deposed that on 22.7.2002 she had met with the

Appellant in Primary Health Centre, Lohandiguda and asked him to prepare her bill for payment. On this, the Appellant had demanded bribe of Rs.500/- from her. She returned saying that she will give him the bribe money later. Thereafter, she went to the office of Lokayukta, Jagdalpur along with her husband and filed the written complaint (Ex.P1). This witness has further deposed that thereafter the panch witnesses were called and they were introduced with her and she had given 5 currency notes of Rs.100/- each in their presence for trap proceedings. She has further deposed regarding proceedings of smearing of phenolphthalein powder on the currency notes, preparation of solution of sodium carbonate and demonstration of the trap proceedings. This witness has further deposed that thereafter the trap party proceeded towards the house of the Appellant. She was on the bike of her husband. While she was on the way, she made a telephonic call to the Appellant. She came to know that the Appellant was present in his office. Then the trap party proceeded towards the office of the Appellant. This witness has further deposed that she went to the office room of the Appellant and told him that she had brought whatever was demanded by him. On this, the Appellant asked her to give him the same. She took out the tainted currency notes from her purse and gave the same in the hand of the Appellant. Thereafter, the Appellant wrapped those currency notes in a paper and kept the same in the pocket of his shirt. Thereafter, both she and the Appellant came out of the office room. She gave a signal to the trap party. The trap party reached the spot and gave their introduction to the Appellant. The Appellant trembled and took out the currency notes from his pocket. He was thereafter taken inside the room. Thereafter, all the remaining

proceedings were done. During her cross-examination, this witness has admitted that at the time when the Appellant had demanded bribe money from her in his office, she was alone there. She has further deposed that on 22.7.2002, the Appellant had made demand of Rs.500/- at his house. She has further deposed that on 22.7.2002, she had met with the Appellant in his office in the morning. At that time, the Appellant had asked her to meet him at his house. Therefore, she had gone and met with him at his house in the evening. But, this fact is not mentioned in her written report (Ex.P1) and in her diary statement. In paragraph 26, this witness has further deposed that in the office room of the Appellant, there were two doors and she went to him from one of the said two doors and asked him to come out. But, the Appellant said that he was preparing bills and, therefore, he was not in a position to come out. Then she entered his office room from the other door of that room. She has further admitted that in that office room, Sursari Prasad (PW20), Pradeep Banik (PW19) and N.P. Bhattacharya (PW10) were also present and they were working there. In paragraph 39, this witness has further admitted that a complaint was lodged against her with an allegation that she had submitted her payment certificate with a forged signature of the Sarpanch.

10. Sanpati (PW2) is husband of the Complainant. This witness only accompanied the Complainant to the office of Lokayukta and on the date of raid to the office of the Appellant. This witness has also admitted that in his presence, the Appellant had not made any demand. In the office of the Appellant, the Complainant alone had gone and he had not heard any talk between the Complainant and the Appellant. This witness has further admitted that when the

Complainant came out from the office of the Appellant, the Appellant also came out and currency notes were present in the hand of the Appellant.

- 11.** Ravendra Kumar (PW3), a panch witness has supported the case of the prosecution. However, he has admitted the fact that from the place where he was standing along with the trap party neither the room of the Appellant was visible to him nor any sound of that room was audible to him. According to this witness, when the trap party caught the Appellant, the Appellant had wrapped the bribe money in a paper and kept the same in the pocket of his shirt and when the Appellant took out the bribe money from his shirt and kept the same in his hand, then the trap party caught him.
- 12.** Rampyare Sharma (PW4) has admitted the fact that payment of the employees was being issued after signature of the C.M.H.O. and on the direction of C.M.H.O. itself, payment was being done. This witness has further admitted that bill of his leave encashment was prepared on 10.5.2002 and was submitted in the treasury.
- 13.** Constable Ramsevak Sinha (PW5) is the witness who had smeared phenolphthalein powder on the currency notes and thereafter kept the same in the purse of the Complainant and this witness himself had prepared sample packets of phenolphthalein powder.
- 14.** Smt. Ranjana Das (PW6) has deposed that according to the pay data, from 7.3.2002 to 15.4.2002, the Complainant was on leave and she had not got a leave sanctioned from this witness for the said period.

- 15.** Head Constable Ramlal Gangesh (PW7) is the witness who had prepared required solutions and he was one of the members of the trap party. He has supported the case of the prosecution
- 16.** Panchayat Sachiv Nehrual Patel (PW8) has admitted that the headquarter of the Complainant was in Village Anjar. She was not living in Village Anjar nor was she usually visiting there. In this regard, Gram Panchayat had also made a complaint against her. This witness has further admitted that since in the month of March, 2002, the Complainant had not done any work in the village, the Gram Panchayat had not sent any proposal regarding her payment. J.R. Jain (PW9), Paryavekshak has also admitted these facts.
- 17.** N.P. Bhattacharya (PW10) is the witness, who, according to the prosecution, was present inside the office of the Appellant at the time of trap proceedings. He has deposed that he was sitting along with the Appellant in the office room. At that time, the Complainant entered the office room from a door and started asking the Appellant to come out of the office room. The Appellant told her that he was preparing bills and, therefore, he was not able to go out. This witness has further deposed that after 5-10 minutes, the Complainant entered the office room from other door and talked to the Appellant. Thereafter, the Complainant went out of the office room and the Appellant also went out behind her. This witness has further deposed that at that time, the Appellant was trying to give something wrapped in a paper to the Complainant saying that why was she giving him the same, what was she doing. At that time, the trap party came and caught the Appellant. This witness has been declared hostile by the prosecution.

- 18.** Dr. Virendra Thakur (PW11) has also admitted that C.M.H.O., Bastar, vide a letter (Ex.P13), had issued a direction that payment of the employees who did not live in the headquarters should not be made. A further direction was issued that till the proposal of the Gram Panchayat is not enclosed, no payment should be made. According to this witness, on these grounds, this witness had raised an objection that payment of the Complainant for the month of April, 2002 should not be made.
- 19.** Inspector R.S. Dhruw (PW14A) is the witness who investigated the entire offence in question. He has deposed according to the case of the prosecution. However, in paragraph 29, he has admitted that at the time of trap, N.P. Bhattacharya (PW10), Pradeep Banik (PW19) and Sursari Prasad (PW20) were present at the spot and he had recorded their statements.
- 20.** Gandhi Joge (PW17) was also one of the members of the trap party. In paragraph 12 of his examination-in-chief, this witness has deposed that on the signal of the Complainant, the trap party reached the spot. On this, the Complainant gave hints that the Appellant had wrapped the bribe money in a paper and kept the same in the pocket of his shirt. Thereafter, according to this witness, when the trap party gave their introduction to the Appellant, he trembled and took out the bribe money from his pocket and kept the same in his hand and thereafter his hand was caught.
- 21.** Pradeep Banik (PW19) is one of the witnesses who was present inside the office room of the Appellant at the time of trap. He has deposed that the Complainant entered the office room from a gate and started calling to the Appellant. The Appellant, saying that he

was working, expressed his inability to go out. Thereafter, the Complainant entered the office room from other gate and talked to the Appellant. According to this witness, thereafter, he himself had gone out of the office room. Sursari Prasad (PW20) is one of the witnesses who was present inside the office room of the Appellant at the time of trap. He has also deposed in similar fashion. This witness has further deposed that thereafter, the Complainant went to the table of the Appellant and asked him why he was not preparing her bill for payment. The Appellant told her that he was preparing all the bills. Thereafter, the Complainant took out something wrapped in a paper from her purse and put the same in the pocket of the shirt of the Appellant and immediately thereafter she went out of the office room. The Appellant also went out behind her saying that what was she doing, he did not want the same and he took out that thing from his pocket. At that time, the trap party came there and caught the Appellant.

- 22.** From the evidence adduced by the prosecution, it is clear that payment of the Complainant for the period from April, 2002 to June, 2002 was not done and her leave surrender amount for March, 2002 was also not paid. From the statements of the witnesses, it is also clear that the Complainant was irregular and due to which complaints were also made against her and her payment was also stopped. Though her pay-bill was prepared, she was not paid her dues. According to the written complaint (Ex.P1) of the Complainant, on 22.7.2002, she had gone to the house of the Appellant. At that time, the Appellant had demanded bribe money of Rs.500/- from her for making her early payment. But, in her Court statement, she has first deposed that the Appellant had demanded bribe money in his office. Contradicting her above

statement, she has further deposed that the Appellant had demanded the bribe money at his house. Then again, she has deposed that first she went to the office of the Appellant and then he called her at his house. Then she went to the house of the Appellant. There, the Appellant demanded the bribe money. But, this fact is not mentioned in her written complaint (Ex.P1) nor in her case diary statement. Thus, actually at which place the bribe money was demanded from her by the Appellant, her statement in this regard is contradictory. From the evidence available on record, it is also clear that at the time when the Complainant met with the Appellant in his office, the talk took place between them was not heard by any member of the trap party. Admittedly, N.P. Bhattacharya (PW10), Pradeep Banik (PW19) and Sursari Prasad (PW20) were also present in the office room at that time. All these three witnesses have deposed that the Complainant entered the office room. At that time, the Appellant was preparing bills. She asked him to come out. The Appellant saying that he was preparing bills, expressed his inability to go out. Thereafter, the Complainant came to the Appellant in the office room and thereafter she went out of the office room and the Appellant also went out behind her. Pradeep Banik (PW19) and Sursari Prasad (PW20) have not been declared hostile by the prosecution. From the statements of these two witnesses, it is clear that in their presence in the office room, the Appellant had not made any demand from the Complainant. Rather, from the statements of N.P. Bhattacharya (PW10) and Sursari Prasad (PW20), it is established that the Complainant had entered the office room and taken out bribe money wrapped in a paper from her purse and put the same in the pocket of the shirt of the Appellant and immediately

thereafter she had gone out of the office room and the Appellant had also gone out behind her saying that what was she doing, he did not want the same and he had taken out the wrapped bribe money from his pocket. Though N.P. Bhattacharya (PW10) has been declared hostile, the prosecution has not declared Sursari Prasad (PW20) as hostile. In these circumstances, if any tainted money was recovered from the Appellant, then also it is not established that this money was accepted by him. Apart from this, there are contradictory statements about the place that actually from which place the tainted money was found at the time of trap. According to Sanpati (PW2), husband of the Complainant, when the Appellant came out behind the Complainant, at that time, money was present in the hand of the Appellant. Ravendra Kumar (PW3) has deposed that when the trap party caught the Appellant, at that time, the Appellant had kept the tainted money wrapped in a paper in his pocket and he had taken out the same from his pocket and kept the same in his hand. Gandhi Joge (PW17) has deposed that when the trap party reached the spot, at that time, the Complainant gave hints that the Appellant had kept the tainted money in his pocket and then the Appellant took out the tainted money wrapped in a paper and kept the same in his hand. As stated by N.P. Bhattacharya (PW10), Pradeep Banik (PW19) and Sursari Prasad (PW20), first, when the Complainant entered the office room and asked the Appellant to come out, then the Appellant said her that he was preparing bills and, therefore, he will not go out. If the Appellant had really demanded the bribe money, he would have gone out of the office room and accepted the same from the Complainant out of the office room instead of accepting the same in the office room in presence of these three witnesses.

If the Appellant had really demanded the bribe money, he would have gone out and accepted the same, but he did not do so. Thus, I find that the demand of bribe money is suspicious. From the above minute examination of the evidence available on record, it is clear that both demand and acceptance of bribe money are not proved.

- 23.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 24.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE