

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1153 of 2012

Reserved on : 20.02.2020

Delivered on : 08.05.2020

Ram Prasad Nayak, S/o Bhagbali Nayak, aged about 56 years, Occupation- Civil Supervisor Grade – III, Shanti Vihar Colony, Dagniya, Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Anti Corruption Bureau Raipur, District- Raipur (C.G.)

---- Respondent

For Appellant : Mr. Saurabh Dangi, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 11.12.2012 passed by Special Judge (Prevention of Corruption Act, 1988) & First Additional Session Judge, Raipur (C.G.) in Special Session Trial No. 01/2007, wherein the said court convicted the appellant for commission of offence under Section 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act, 1988") and sentenced to undergo R.I. for 1 year and fine of Rs. 5000/- & R.I. for 2 years and fine of Rs. 10,000/- respectively with further default stipulations.
2. As per version of the prosecution, appellant namely Ram Prasad Nayak was posted as Supervisor in the office of Chhattisgarh State

Electricity Board, Raipur and one R.P. Thakur was posted as Additional Superintending Engineer in the said office. Complainant namely Mansukhlal Ambabhai Thumar was contractor and was allotted work of 15 units staff quarter at Gurur. Work was completed and partial payment was also done to the tune of Rs. 43 lakh. Bill of Rs. 16 lakh was remained to be paid, but the same was not sanctioned and it is alleged that the appellant and one R.P. Thakur demanded Rs. 60,000/- as illegal gratification for sanctioning rest of the bill amount. The matter was reported by the complainant with Anti Corruption Bureau, Raipur. After complying with all the legal formalities, one trap party was arranged. Currency note was recovered from possession of the appellant. Though, the complaint was made against Additional Superintending Engineer- R.P. Thakur by the complainant, but sanction to prosecute under Section 19 of the Act, 1988 was not granted against the said Additional Superintending Engineer. Sanction was granted against the present appellant that is why the present appellant was prosecuted. After completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

- (i) The appellant was posted as Supervisor and his duty was to supervise the work and once the work is completed, he was not authorized for any further act.
- (ii) Passing of bills was in domain of the Additional Superintending Engineer, therefore, the appellant had no role for passing the bills and demand can not be made by him.
- (iii) From evidence of the complainant namely Mansukhlal

Ambabhai Thumar (PW-2), it is clear that no demand was made by the present appellant, but demand was made by Additional Superintending Engineer- R.P. Thakur, therefore, demand on the part of the present appellant is not established from the total evidence adduced by the prosecution.

(iv) From evidence of Mansukhlal Ambabhai Thumar (PW-2) and Jayanti Bhai (PW-14), it is clear that the amount was handed over to Additional Superintending Engineer- R.P. Thakur, therefore, it is not a case where the appellant has accepted any amount.

(v) Though, it has come on record that R.P. Thakur gave the money to the appellant for some period, but that is not the acceptance of amount as illegal gratification because amount was to be returned by the appellant to the said Additional Superintending Engineer after custody of some time, therefore, demand and acceptance on the part of the appellant is not established. When demand and acceptance is not established against the present appellant, Section 20 of the Act, 1988 has no application in the present case.

(vi) The trial court has overlooked the material aspect of the case, therefore, finding arrived at by the trial court is liable to be set aside.

4. Learned counsel for the appellant placed reliance in the matter of **Krishan Chander Vs. State of Delhi**, reported in **(2016) 3 SCC 108**, **C.M. Girish Babu Vs. C.B.I.**, reported in **(2009) 3 SCC 779**, **Razik Ram Vs. Jaswant Singh**, reported in **(1975) 4 SCC 761**, **Bal Krishan Sayal Vs. State of Punjab**, reported in **AIR 1987 SC 689** & **Subash Parbat Sonvane Vs. State of Gujrat**, reported in **(2002) 5 SCC 86**.
5. On the other hand, learned State counsel submits that the finding

arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. Learned State counsel placed reliance in the matter of **State of Gujarat Vs. Navinbhai Chandrakant Joshi & others**, reported in **(2018) 9 SCC 242**.
7. I have heard learned counsel for the parties and perused the records.
8. First question for consideration before this Court is whether the appellant demanded any money from the complainant as illegal gratification. Mansukhlal Ambabhai Thumar (PW-2) is complainant in the present case. This witness deposed before the trial court (Para 3) that Additional Superintending Engineer- R.P. Thakur demanded money from him. This witness has not deposed that the present appellant has ever demanded money as illegal gratification. There is no shadow witness in the present case regarding demand by the appellant, but for evidence of the complainant, no other witness is available to establish any demand on part of the appellant.
9. Admittedly, the appellant was junior officer who was posted as Supervisor while as per the complaint made by the complainant, one R.P. Thakur was Additional Superintending Engineer and he was superior officer and was competent for passing the bill which is cause of the demand. In absence of any shadow witness and looking to the statement of the complainant that no demand was made by the present appellant, there is nothing on record to say that the appellant demanded illegal gratification. From the entire evidence on record, it is not proved that the appellant demanded money from the complainant

as illegal gratification.

10. Second question for consideration before this Court is whether the appellant accepted money knowing it to be illegal gratification. Mansukhlal Ambabhai Thumar (PW-2) deposed before the trial court that he gave Rs. 60,000/- to the Additional Superintending Engineer- R.P. Thakur and he gave the same to the present appellant. Jayanti Bhai (PW-14) deposed on the same line that the money was handed over by the complainant to R.P. Thakur and said R.P. Thakur handed over the money to the present appellant. Mansukhlal Ambabhai Thumar (PW-2) further deposed that at the time of handing over of money to R.P. Thakur, the present appellant was not present and he has not made any complaint against the present appellant.
11. Though, trap witnesses namely Samay Lal Paikra (PW-4), Shivbadan Mishra (PW-8), Inspector- Baldev Singh (PW-13) & Deputy Superintendent of Police- Anil Kumar Patkak (PW-15) deposed before the trial court that money was recovered from the appellant, but the fact remains whether the appellant received any money as illegal gratification. From evidence of the complainant- Mansukhlal Ambabhai Thumar (PW-2), it is clear that no demand was made by the present appellant. He deposed (Para 13) that money was handed over to R.P. Thakur and as per version of this witness and Jayanti Bhai (PW-14), said R.P. Thakur handed over the money to the present appellant. From evidence of the complainant, it is clear that no demand was made by the present appellant. There is nothing in his statement that the demand was made by the appellant. The present appellant was not present at the same time, therefore, there is nothing on record to

say that the present appellant had any knowledge regarding demand by R.P. Thakur. If money is handed over to him by his superior officer, the same cannot be termed as acceptance of amount as illegal gratification. The amount was trusted by his superior officer to the appellant for some time and ultimately that amount was to be returned by the present appellant to his superior officer namely R.P. Thakur, therefore, it cannot be said that the appellant received any money as illegal gratification. When demand and acceptance is not proved, Section 20 of the Act, 1988 has no application in the present case and no presumption can be drawn against the present appellant.

12. 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."

13. On overall assessment of the entire evidence, factual matrix of the case and legal aspect of the matter, the demand or acceptance on the part of the appellant is not established. The charge under Section 7 & 13(1)(d) read with Section 13(2) of the Act, 1988 are not established against the present appellant, therefore, the finding arrived at by the trial court is not sustainable.
14. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 7 & 13(1)(d) read with Section 13(2) of the Act, 1988. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

**Sd/-
(Ram Prasanna Sharma)
Judge**