HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 8-11-2019

Delivered on 6-02-2020

CRA No. 138 of 2003

- Sheel Bhadra s/o. Latoori Lal, aged about 41 years, r/o. Rajmahal para, Kawardha, District Kawardha (CG).

---- Appellant.

Versus

- State of Chhattisgarh through S.P. Lokayukta Office, Raipur, District Raipur (CG).

---- Respondent

For Appellant : Mr. Vivek Sharma, Advocate

For respondent/State : Mr. Subha Shrivastava, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 20-1-2003 passed by the Special Judge (Prevention of Corruption Act), Rajnandgaon (CG) in Session Case No.2 of 1998 wherein the said Court has convicted the appellant for the commission of offence under Section 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988") and sentenced him to undergo RI for three years and fine of Rs.5000/- with default stipulations.

2. As per version of prosecution, appellant was posted as Sub Divisional Forest Officer at Kawardha in the year 1997-1998 and complainant namely Sunderlal Pastariya was posted as Range Officer and he was subordinate to the appellant. As per version of prosecution, for signing the expenditure bill of Range Officer and for making satisfactory note of his daily register, appellant demanded Rs.20,000/- from him as illegal gratification and complaint was made by the complainant and on the basis of complaint a trap was arranged and appellant was caught in trap after taking Rs.10,000/- from complainant of 100 currency notes of Rs.100 denomination. Appellant was charge-sheeted and convicted as mentioned above.

3 Learned counsel for the appellant would submit as under:

i) From the applications Ex.P/3 and P/6 demand by the appellant is not established and date and place of demand is also not proved.

ii It is also not established from 25-4-1998 to 2-5-1998 demand was made. It is also not mentioned in Ex.P/3 & P/6 that demand is made regarding signing of vouchers of complainant. Daily register of the complainant is not seized and proved before the trial court for which it is alleged that demand was made for approval of diary.

iii) Document Ex.D/1 is not produced originally which is clear from the order sheet dated 12-1-2001 and 21-3-2001.

iv) As demand is not established, Section 20 of the Act, 1988 is not applicable in the present case.

v) Rs.10,000/-was borrowed by complainant from the appellant and he has returned the money though loan was not given through cheque but same is mere irregularity and case under Section 13(1)(d) of the Act, 1988 is not established.

Reliance has been placed in the matter of **Mukhtiar Singh (since deceased) through his legal representatives vs. State of Punjab reported in 2017(3) SCC (Cri) 607, V. Sejappa vs. State by Police Inspector, Lokayukta, Chitradurga, 2015(2) Crimes 116 (SC), Suraj Mal vs. State (Delhi administration) 1979 (4) SCC 725, C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779 and B.Jayaraj vs. State of A.P (three judges Bench) 2014 (13) SCC 55.**

4 On the other hand, learned counsel for the respondent 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 while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The question for consideration of this court is whether the appellant demanded Rs.10,000/- from the complainant as illegal gratification to show any official favour and whether the said amount was received by the appellant as consideration for showing such official favour. The trial court recorded finding that in complaint made by the complainant Sunderlal Pastariya (PW/3) date was mentioned as 1-5-1998 and by over-writing it is made 28-5-1998 which is admitted by the complainant Sunderlal Pastariya in his statement (para 15) and statement of Investigating Officer (PW/10) (para 20). Suderlal Pastariya (PW/3) deposed before the trial court that appellant did not demand money on 28-4-1998 but he demanded on 25-4-1998 and for that he made oral complaint to Divisional Forest Officer. Investigating Officer (PW/10) (para 23) deposed that complainant did not tell him that the appellant demanded money on 25-4-1998.

7. Divisional Forest Officer (DW/2) deposed (para 5) that complainant did not make any complaint against the appellant. After

assessing the evidence the trial court recorded finding that no demand was made between 26-4-1998 to 28-4-1998. From the statement of the complainant it is clear (para 15) that the appellant did not meet the complainant on 29-4-1998 and 30-4-1998. The trial court also recorded finding that no one was examined to identify the voice of the appellant and the complainant, therefore, demand on the part of the appellant is also not established. The trial court also recorded finding that as per Ex.D/22, complainant borrowed a sum of Rs.10,000/- from the appellant two months ago prior to the date of incident and the Divisional Forest Officer permitted him to advance money.

8. It is argued on behalf of the appellant that complainant borrowed a sum of Rs.10,000/- from the appellant and same was returned to him but while returning the amount conspiracy was hatched against him and he has been falsely implicated.

9. The only question for consideration of this court is whether the appellant can be convicted for offence under Section 13 (1)(d) of the Act, 1988 even if no demand was made by him. 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."

10. As demand by the appellant is not proved and as there was controversy that amount is returned which was borrowed by the complainant, conviction of the appellant under Section 13 (1)(d) read with Section 13(2) of the Act, 1988 is not sustainable.

11. 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 in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju