

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.694 of 2001

Judgment Reserved on : 18.2.2021

Judgment Delivered on : 22.3.2021

Smt. Saroj Acharya, aged 38 years, wife of Anil Acharya, resident of Accountant Incharge, Establishment Branch, General Forest Division, Kondagaon, District Bastar

---- Appellant

versus

The State of Chhattisgarh through Special Police Establishment, Bastar Division, District Bastar

--- Respondent

For Appellant : Shri Ashutosh Tiwari, Advocate on behalf of
Shri Shashi Bhushan Tiwari, Advocate
For Respondent : Shri H.S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 24.7.2001 passed by 1st Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act'), Jagdalpur, District Bastar in Special Case No.4 of 1998, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the PC Act	Rigorous Imprisonment for 2 years and fine of Rs.1000/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the PC Act	Rigorous Imprisonment for 2 years and fine of Rs.1000/- with default stipulation

2. Facts of the case, in short, are that at the relevant time, the Appellant was posted as a Clerk in Establishment branch of the office of Van Mandal Adhikari, Kondagaon. Brijlal Netam, husband of Complainant Kaushalyabai (PW1) was posted there as Forest Guard. After his death, Complainant Kaushalyabai (PW1) made an application for compassionate appointment on 9.11.1995. It is alleged that thereafter the Appellant made an illegal demand of Rs.5,000 from the Complainant on the ground that she will help her in forwarding relevant Forms No.1 and No.2. Since the Complainant did not want to give money, she made a written complaint (Ex.P1) to the Superintendent of Police, Special Police Establishment, Lokayukta, Jagdalpur on 28.11.1997. Then she and her *dever* (brother-in-law) Tulsiram (PW2) were given a tape recorder for recording conversation. A panchnama (Ex.P2) was prepared in this regard. On 29.11.1997, the Complainant and her brother-in-law Tulsiram went to the office of the Appellant and thereafter her house. During their conversation, the Appellant demanded bribe. The whole conversation was recorded in the tape recorder. The Appellant asked the Complainant to bring the bribe money on 3.12.1997. After return, the Complainant and her brother-in-law returned the tape recorder in the office of Lokayukta. The tape recorder was seized vide Ex.P3 and a transcription of the conversation recorded in the tape recorder was prepared vide Ex.P22. On 3.12.1997, the Complainant and her brother-in-law Tulsiram went to the office of Lokayukta and submitted a written complaint (Ex.P4) and the Complainant also submitted currency notes of Rs.2,000. Panch witnesses M.S. Dhruw (PW4) and V.K.

Som (PW10) were called. They verified the complaint from the Complainant. The currency notes of Rs.2,000 submitted by the Complainant were smeared with phenolphthelin powder, their numbers were noted and thereafter those notes were knotted in the saree worn by the Complainant and she was given a demonstration of the raid proceeding. In this regard, a panchnama (Ex.P5) was prepared. Thereafter, the raid party reached to Kondagaon. The Complainant and her brother-in-law went to the house of the Appellant. The panch witnesses and remaining members of the trap party stood behind at some distance. The Appellant was knitting a sweater in her house. Her sister Prema Yadav was sitting beside her. The Appellant received the bribe money in her hand and thereafter gave the same to her sister Prema Yadav for counting. Thereafter, the Appellant came out of her house for going to her office. At that time, on giving signal by Tulsiram (PW2), brother-in-law of the Complainant, the trap party went to the Appellant and caught her. On being asked, the Appellant told that the bribe money was given by her to Prema Yadav. The bribe money was recovered from Prema Yadav. Hands of Prema Yadav were washed in a solution of sodium carbonate on which colour of the solution turned into pink. The recovered currency notes were dipped into another solution of sodium carbonate on which colour of the said solution turned into pink. Numbers of the recovered currency notes were compared with the numbers already noted. The numbers matched. A transcription of the conversation took place between the Appellant and Tulsiram (PW2) was prepared vide Ex.P24. On completion of other formalities and after obtaining

necessary sanction for prosecution, a charge-sheet was filed against the Appellant and co-accused Prema Yadav. The Trial Court framed charges against them.

3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statements of the Appellant and co-accused Prema Yadav were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. A defence was taken that the Complainant had come to the house of the Appellant for stay and next day her medical examination was to be done at Jagdalpur. Since the Complainant was afraid of stealing of her money there, she gave that money to the Appellant and the Appellant gave that money to her sister Prema Yadav for keeping the same in almirah. Jini Cherian alias Smt. Suman Singh (DW1) was present there at that time and she also heard the whole conversation. The Appellant had not made any demand for bribe nor had she received that money as bribe.
4. On completion of the trial, the Trial Court acquitted co-accused Prema Yadav of all the charges, but convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Trial Court has wrongly convicted the Appellant without there being sufficient evidence against her on record. Referring to the statement of Complainant Kaushalyabai (PW1), it was argued that she has not supported the case of the prosecution and turned

hostile and, therefore, conviction of the Appellant is not sustainable. It was further submitted that the allegation of demand of bribe is not acceptable because the allegation relates to the demand of bribe for the work which was already done. It was further submitted that both the ingredients of demand and acceptance of bribe in this case are not established beyond reasonable doubt and for this reason also, the conviction of the Appellant is not sustainable. It was further submitted that the Trial Court has accepted that Suman Singh (DW1) was present at the house of the Appellant at the time of the raid conducted there. Suman Singh (DW1) has categorically stated that in her presence neither any demand was made nor was any bribe accepted by the Appellant. Therefore, the Trial Court ought to have accepted that no bribe was demanded nor was any bribe accepted by the Appellant. It was further submitted that in the transcriptions of the conversations (Ex.P22 and P24) also, no fact regarding demand of bribe is mentioned and, therefore also, the demand is not established.

6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment. It was argued by the State Counsel that though Complainant Kaushalyabai (PW1) has turned hostile, her brother-in-law Tulsiram (PW2) and panch witnesses M.S. Dhruw (PW4) and V.K. Som (PW10) have supported the case of the prosecution. They have no enmity with the Appellant and, therefore, conviction of the Appellant is sustainable. According to the State Counsel, both demand and acceptance are proved. Therefore, the Trial Court has rightly

convicted the Appellant.

7. I have heard Learned Counsel appearing for the parties and perused the entire material available including the statements of witnesses with due care.
8. Present is a case of demand and acceptance of illegal gratification other than legal remuneration by misusing the office by a public servant. A heinous offence relating to a public servant is sufficient for termination of his services. Degree/standard of proof of ingredients of the offence is high and the prosecution is required to prove the offence by adducing cogent evidence without leaving any room for doubt or ambiguity.
9. In case of an illegal gratification, there are three essential ingredients to constitute the offence. They are (i) demand, (ii) acceptance and (iii) recovery.
10. In **2010 AIR SCW 2282 (Banarsidas v. State of Haryana)**, it was held by the Supreme Court that demand and acceptance of bribe are essential ingredients of the offence. Mere proof of recovery of bribe money from the accused is not sufficient to prove the offence.
11. In **(2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin, High Court of Kerala)**, the Supreme Court held thus:

“18. In *Suraj Mal v. State (Delhi Admn.)*, (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused

when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.”

12. In (2015) 11 SCC 314 (**C. Sukumaran v. State of Kerala**), it was held by the Supreme Court as under:

“13. With reference to the abovementioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of the fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution.”

13. Dealing with the similar issue, again, the Supreme Court held in (2017) 8 SCC 136 [**Mukhtiar Singh (since deceased) Through His Legal Representative v. State of Punjab**] thus:

“13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A. Subair v. State of Kerala*, (2009) 6 SCC 587, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in *State of Kerala v. C.P. Rao*, (2011) 6 SCC 450 that mere recovery by itself of the amount said to have been paid by way of illegal gratification 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.”

14. In the instant case, on examination of the evidence adduced by the prosecution in the light of above judgments of the Supreme Court, I find that Complainant Kaushalyabai (PW1) has not duly supported the entire case of the prosecution and turned hostile. Though after declaring her hostile, she has admitted the fact that initially when she met with the Appellant, at that time, the Appellant demanded bribe of Rs.5,000, but, in paragraph 18 of her cross-examination, this witness has admitted that since she had visited 3-4 times to the office of the Appellant, she thought that the Appellant was making her visit her office frequently for bribe.
15. According to the case of the prosecution, after making first complaint (Ex.P1), a tape recorder was given to Complainant Kaushalyabai (PW1) and her brother-in-law Tulsiram (PW2) for recording conversation which was to be taken between them and the Appellant. The conversation was recorded by them whose transcription was prepared vide Ex.P22. Tulsiram (PW2), during his cross-examination in paragraphs 41 and 42 has admitted the fact that in the transcription (Ex.P22), there is no content regarding demand of bribe. From the note made by the Trial Court in paragraph 42 of this witness, it also appears that the Trial Court had also heard the cassette (Article A-1) and observed that in the cassette there was no demand for bribe. Thus, from the above evidence, it is clear that Complainant Kaushalyabai (PW1) had initially visited the office of the Appellant. Demand for bribe was

made at that time is suspicious. When Complainant Kaushalyabai (PW1) and her brother-in-law Tulsiram (PW2) had gone to the house of the Appellant along with the tape recorder and recorded their conversation, at that time also, as observed by the Trial Court, demand for bribe was not made.

16. It is also the case of the prosecution that at the time of making raid, when Complainant Kaushalyabai (PW1) and Tulsiram (PW2) had gone to the house of the Appellant, at that time also, the Appellant had demanded bribe and the conversation thereof was recorded in the tape recorder. Transcription of the said conversation is Ex.P24. After going through Ex.P24, I find that there is no specific fact in Ex.P24 regarding demand of Rs.2,000 or Rs.5,000 by the Appellant from the Complainant. During her cross-examination, Complainant Kaushalyabai (PW1) has admitted that for the purpose of her joining, she had to appear in District Hospital, Jagdalpur for her medical examination. First, she went to the Appellant at Kondagaon. At that time, it was decided that the Appellant will also go along with her to Jagdalpur and the Appellant had offered her to stay at her house in the night. In paragraph 42 of her cross-examination, this witness has further deposed that in the house of the Appellant, during conversation with the Appellant regarding her medical examination, she took out the money knotted in her saree and gave the same to the Appellant on which the Appellant got surprised and thereafter she gave that money to her sister for counting. Had the Appellant demanded bribe from this witness (Complainant) and the money was given to her as bribe, she would

not have surprised. Admittedly, at the time when the raid was conducted, Suman Singh (DW1) was present there. Her statement was recorded by the Investigating Officer, but she was not examined by the prosecution. Rather, the Appellant examined her as a defence witness. In her statement, she (DW1) has deposed that when Complainant Kaushalyabai (PW1) and Tulsiram (PW2) had come to the house of the Appellant, at that time, she was present there. At that time, Complainant Kaushalyabai (PW1) had told to the Appellant that she had gone to Jagdalpur for her medical examination. Then the Appellant offered Kaushalyabai (PW1) to stay at her house in the night. On this, Kaushalyabai (PW1) gave money to the Appellant telling that while her going out in the morning, she may be given back that money. Then the Appellant gave that money to her sister Prema Yadav for counting. Though the Trial Court has disbelieved the statement of Suman Singh (DW1), it is clear that DW1 was a witness of the prosecution but the prosecution has not examined her and the statement of this witness (DW1) has not duly been rebutted. In the circumstances, I see substance in the above statement of DW1.

17. On a minute examination of the evidence mentioned above, it is clear that on all the occasions, i.e., at the time of first meeting, thereafter at the time of recording first conversation and lastly at the time of conducting raid, the Appellant demanded bribe on any of those occasions is not established beyond reasonable doubt. Though tainted money was recovered from the Appellant, from the admissions made by Complainant Kaushalyabai (PW1) and from

the statement of Suman Singh (DW1), acceptance of the tainted money as a bribe by the Appellant appears to be doubtful. In the circumstances, mere recovery of the tainted money from the Appellant is not sufficient to hold her guilty.

18. As an outcome of the discussion made above, the instant appeal is allowed. The judgment of the Trial Court under challenge before this Court is set aside. The Appellant is acquitted of the charges framed against her.

Sd/-
(Arvind Singh Chandel)
JUDGE