

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2267 of 1998

Gauri Shankar Ahirwar, S/o Shri Janki Prasad Ahirwar, aged about 36 years, Sub-Inspector (Police), Station Incharge Chhura, District Raipur, M.P. (now Chhattisgarh) ----- **Dead, Represented through his son Rakesh Ahirwar (Court Order dated 6.12.2008)**

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Lokayukta, Raipur, M.P. (now Chhattisgarh)

--- Respondent

For Appellant : Shri Prafull N. Bharat, Advocate
For Respondent : Shri H.S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

25.3.2021

1. During pendency of this appeal, the Appellant died. Vide order of this Court dated 6.12.2008, his son Rakesh Ahirwar is permitted to continue the appeal.
2. The appeal has been preferred against judgment dated 11.9.1998 passed by the Special Judge, Raipur in Special Case No.117 of 1991, whereby the Appellant was convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 161 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000 with default stipulation
Under Section 5(1)(d)/5(2) of the Prevention of Corruption Act, 1947 (henceforth 'the Act')	Rigorous Imprisonment for 1 year and fine of Rs.1,000 with default stipulation

3. According to the case of prosecution, at the relevant time, the Appellant was posted as Station House Officer of Police Station Chhura. On the festival of *Hariyali* on 5.8.1986, at Village Hirabatar, a competition of *Kabaddi* was organised. Daulatram, son of Complainant Ajab Singh (PW1) and Gautam were also participating in the competition. At that time, their dispute took place with Gangaram. A report was made by Village Kotwar in this regard in Police Station Chhura. Allegedly, the Appellant threatened Complainant Ajab Singh to lodge him in lock up and demanded bribe of Rs.700. Finally, bribe money was settled at Rs.400 between them. Since the Complainant did not want to give bribe to the Appellant, he along with Dayanand Sharma (PW16) went to the office of Lokayukta, Raipur and made a written complaint (Ex.P2) on 12.8.1986. Panch witnesses were called. They were shown the complaint (Ex.P2) by the Complainant. They verified the contents of the complaint (Ex.P2) from the Complainant. A sum of Rs.375 was submitted by the Complainant in the Lokayukta office for trap proceeding. A panchnama regarding all these proceedings was prepared in which numbers of the currency notes submitted by the Complainant were noted. On completion of other formalities, a trap party proceeded towards Chhura. On reaching Chhura, the trap party came to know that the Appellant was staying in Room No.2 of the Rest House of P.W.D. at Chhura. The Complainant entered the said room. Remaining members of the trap party stayed out of the said room. On being demanded, the Complainant gave the bribe money to the Appellant. Thereafter, the Complainant came out of the room and then the trap party went inside the room. The

Appellant was caught and asked about the bribe money. The Appellant told the trap party that the bribe money was kept in an almirah. The bribe money was recovered from that almirah. Numbers of the currency notes recovered from the almirah were compared with the numbers recorded in the pre-trap panchnama on which the numbers matched. Thereafter, hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. On completion of other formalities, Dehati Nalishi (Ex.P16) was recorded. Later on, on the basis of the Dehati Nalishi, First Information Report (Ex.P17) was registered. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.

4. To bring home the offence, the prosecution examined as many as 17 witnesses. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
5. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 2nd paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellant submitted that without there being any evidence on record regarding demand and acceptance of bribe money, the Trial Court convicted the Appellant. It was further submitted that Complainant Ajab Singh (PW1) has

not supported the case of the prosecution and turned hostile. The Complainant admitted the fact that the Appellant had never made any demand of money nor had he handed over him any money. Both panch witnesses Omprakash Singh (PW3) and B.I.R. Naidu (PW5) are interested witnesses and, therefore, their statements are not reliable. It was further submitted that both the panch witnesses had stayed outside the room of the Rest House in which the Appellant was present. Neither the bribe money was demanded nor was it accepted by the Appellant from the Complainant in presence of the panch witnesses nor did any conversation regarding demand or acceptance of bribe money take place in their presence. Therefore, in this case, neither the demand of bribe money is proved nor is acceptance thereof proved. Merely on the basis of recovery of money, conviction of the Appellant is not sustainable.

7. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellant and supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the entire material available on record including the statements of witnesses.
9. In a case of illegal gratification, there are 3 essential ingredients to constitute the offence, namely, (i) demand, (ii) acceptance and (iii) recovery.

10. As argued by Learned Counsel appearing for the Appellant, neither the demand of bribe money is proved nor is acceptance thereof proved. On this point, I have gone through the statements of witnesses. Complainant Ajab Singh (PW1) himself has not supported the case of the prosecution and turned hostile. According to the Court statement of this witness, the Appellant never called and threatened him. He never demanded any bribe money from him nor did he accept any money from him. This witness deposed that Dayanand Sharma (PW16), a union leader of labours had taken him along with him to the Vigilance Office, Raipur. There, Dayanand Sharma (PW16) talked with the officers of Vigilance Office and thereafter thumb impression of this witness was obtained on a complaint (Ex.P2) by the Lokayukta Officers. This witness further deposed that the Lokayukta Officers took a sum of Rs.375 from him. They smeared those currency notes with some powder. Thereafter, they took him to Chhura. There, the Vigilance Officers told him to hand over the tainted money to the Village Kotwar and on not finding the Village Kotwar, he was asked to give the said money to the Station House Officer. According to the further statement of this witness, on not finding the Village Kotwar, he went to the Rest House. In the Rest House, when he tried to give the tainted money to the Appellant, the Appellant shook his hand and did not accept the bribe money and thereafter this witness put that money in an almirah kept in the bathroom of the Appellant and went out of the said room of the Rest House. During cross-examination, in paragraph 16, this witness further deposed that the Village Kotwar had told him that Rs.700 should be given to

the Station House Officer otherwise he will lodge him in the lock up. From perusal of the above statement of this witness, it is clear that he has not supported the case of the prosecution in any manner. From his statement, neither the demand of bribe money is proved nor is acceptance thereof proved.

11. From perusal of the statements of panch witnesses Omprakash Singh (PW3) and B.I.R. Naidu (PW5), it reveals that at the time of trap proceeding, both these witnesses stood up out of the room of the Rest House in which the Appellant had stayed and inside the room of the Appellant only the Complainant had gone. Both the panch witnesses admitted that neither they witnessed giving of bribe money by the Complainant to the Appellant nor did they hear any conversation regarding demand or acceptance of bribe money. Omprakash Singh (PW3), who was a Law Officer admitted the fact that he had been a witness in many cases of Lokayukta. B.I.R. Naidu (PW5) was also posted in the office of Lokayukta, Raipur. Thus, it is also clear that both panch witnesses Omprakash Singh (PW3) and B.I.R. Naidu (PW5) are interested witnesses. Therefore also, their statements are not reliable.
12. On a minute examination of the above evidence, it is clear that in this case the prosecution has not been able to prove its case of demand of bribe money by the Appellant. The prosecution has also not been able to prove that the Appellant accepted any bribe money knowingly that it was a bribe. In the circumstances, only on the basis of recovery of the tainted money from the Appellant, the

offence alleged against him is not proved. Therefore, the conviction of the Appellant is not sustainable.

- 13.** 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.

Sd/-

(Arvind Singh Chandel)
JUDGE