

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.829 of 2003

Judgment Reserved on : 4.3.2021

Judgment Delivered on : 9.6.2021

Shivprasad Kuldeep, son of Late Prem Lal Kuldeep, aged about 42 years, occupation Beat Guard, Village Naragawon, Tahsil Gurur, District Durg, R/o Village – P.O. - Singhola, Thana Dondi, Tahsil Balod, District Durg, Chhattisgarh ---**Dead, Represented Through His Legal Heirs, namely,—**

1. Pramod Kumar, S/o Late Shiv Prasad Kuldeep, aged about 31 years,
2. Ashish Kumar, S/o Late Shiv Prasad Kuldeep, aged about 27 years,
3. Sandeep Kumar Kuldeep, S/o Late Shiv Prasad Kuldeep, aged about 29 years,
All residents of Village Singhola, P.S. Dondi, Tahsil Balod, District Balod
4. Smt. Rekha Lohle, W/o Lilesh Kumar Lohle, aged about 26 years, R/o 271, Durga Chowk, Ward No.6, Gurur, District Balod, Chhattisgarh, 491227

---- Appellant

versus

State of Chhattisgarh through Special Police Establishment Lokayukta Office, Raipur Division, Raipur, Chhattisgarh

--- Respondent

For L.Rs. of Appellant	:	Shri Vivek Sharma, Advocate
For Respondent	:	Shri H.S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. During pendency of the instant appeal, the Appellant died. By order of this Court dated 5.12.2019, his above-named 4 legal representatives have been brought on record.
2. The appeal has been preferred against judgment dated 16.7.2003

passed by First Additional Sessions Judge and Special Judge, Durg in Special Case No.1 of 2000, whereby the Appellant (dead) was convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Prevention of Corruption Act, 1988 (henceforth 'the PC Act')	Rigorous Imprisonment for 6 months and fine of Rs.500 with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the PC Act	Rigorous Imprisonment for 1 year and fine of Rs.500 with default stipulation
	Both the jail sentences are directed to run concurrently

3. Prosecution case, in short, is that at the relevant time, the Appellant was posted as a Beat Guard in the forest situated at Village Naragaon. Complainant Ashok (PW3), a resident of the said village had demolished his old house and raised a new construction there. For raising the new construction, he had purchased some wood from a government depot and some wood was used by him available from his old demolished house. The Appellant/Beat Guard told Complainant Ashok (PW3) that the wood used by him for raising the new construction of his house was stolen by him from the forest. Allegedly, the Appellant demanded bribe of Rs.5,000 for not making a forest case against the Complainant. Ultimately, the Appellant consented to accept bribe of Rs.1,000. Since the Complainant did not want to give bribe to the Appellant, he submitted a written complaint (Ex.P2) in the office of Superintendent of Police, Lokayukta, Raipur. For confirmation of the demand of bribe, the Complainant was given a tape recorder

and a blank cassette for recording his conversation with the Appellant regarding the demand. On 10.4.1999, the Complainant again met with the Appellant. At that time, the Appellant again demanded the bribe of Rs.1,000 from the Complainant. The Complainant recorded this conversation in the tape recorder. On 15.4.1999, the Complainant returned to the office of the Superintendent of Police, Lokayukta, Raipur with the recorded conversation and there he again submitted a written complaint (Ex.P5). On the basis of the written complaint (Ex.P5) and the recorded conversation, First Information Report (Ex.P20) was registered. Panch witnesses R.P. Sao (PW6) and Rajendra Swarnakar (PW9) were called. They verified the contents of the complaint (Ex.P5) from the Complainant. A transcription (Ex.P4) of the recorded conversation was prepared. The Complainant produced 10 currency notes each in the denomination of Rs.100, total Rs.1,000 for the trap proceeding. Their numbers were noted and they were smeared with phenolphthalein powder. A demonstration of the trap proceeding was given to the Complainant and the panch witnesses. The Complainant was again given a tape recorder and a blank cassette for recording his conversation with the Appellant. A trap party proceeded towards the village of the Appellant. The Complainant alone was sent to the house of the Appellant where his office was also situated. The panch witnesses and other members of the trap party stayed nearby the house of the Appellant. In his house, the Appellant again demanded bribe money from the Complainant. The Complainant gave him the tainted money in his house. At that time, the Complainant forgot to

switch on the tape recorder and, therefore, the conversation took place between him and the Appellant could not be recorded. After giving the tainted money to the Appellant, the Complainant came out of the house and gave a signal to the trap party on which the trap party entered the house of the Appellant. Hands of the Appellant were caught. His hands were washed in a solution of sodium carbonate on which colour of the solution turned into pink. The Appellant had kept the tainted money in the left pocket of his shirt. The tainted money was recovered from there. The shirt of the Appellant was also dipped into a solution of sodium carbonate on which colour of the solution turned into pink. The recovered currency notes were also dipped into a solution of sodium carbonate on which colour of the solution turned into pink. On completion of other formalities and 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 12 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. It was the defence of the Appellant that on being inquired, the Complainant had admitted that he had committed theft of the wood from the forest for the purpose of construction of his house. Therefore, on 14.4.1999, Forest Crime No.4969/6 was registered against the Complainant and he was directed to meet with the Deputy Ranger for deposit of fine. The Complainant had told that on that day he

did not have money and he will go to the Deputy Ranger tomorrow for deposit of the fine. But, instead of going to the Deputy Ranger on 15.4.1999, the Complainant went to the office of Superintendent of Police, Lokayukta, Raipur and made there the false and fabricated complaint alleging demand of bribe by the Appellant. On 15.4.1999 itself, the Complainant came to the office of the Appellant at 5:00 p.m., i.e., at the time of trap and told him that he had gone to the Deputy Ranger with regard to deposit of the fine and telling him (the Appellant) that he should keep the money with him, deliberately kept the tainted money in the pocket of his shirt and thereafter the Complainant went out from there telling that he will return to him soon. The Appellant never made any demand for bribe nor did he accept the said money as bribe. He has been falsely implicated in the case by the Complainant. In his defence, the Appellant examined three witnesses.

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 the Trial Court has convicted the Appellant without there being sufficient and clinching evidence against him on record. It was argued that in the transcription (Ex.P4), there is nothing to show that there was any demand by the Appellant for bribe. Regarding the written complaint (Ex.P2) made by the Complainant, it was argued that Ex.P2 does not bear signature of the Complainant and the Complainant has also admitted the fact that the complaint

(Ex.P2) was not written by him. Therefore, examination of the author of the complaint (Ex.P2) is necessary. It was further argued that at the time of trap also, despite having a tape recorder and a blank cassette, alleged conversation took place between the Complainant and the Appellant was not recorded by the Complainant. From the evidence on record, it is also established that at the time of trap, the Complainant alone had gone inside the house of the Appellant and rest of the members of the trap party and the panch witnesses had stayed nearby the house of the Appellant and none of them witnessed the Complainant giving money to the Appellant inside the house nor did any of them hear the conversation took place between the Complainant and the Appellant inside the house. The demand of bribe at any stage has not been proved by the prosecution in this case. Mere recovery of the tainted money does not constitute any offence against the Appellant. It was further argued that it has been admitted by the Investigating Officer that on 14.4.1999 itself a forest crime was registered by the Appellant/Beat Guard against the Complainant. The written complaint (Ex.P5) was submitted by the Complainant in the office of Superintendent of Police, Lokayukta, Raipur on 15.4.1999. Therefore, there is substance in the defence of the Appellant that since he had registered a forest crime against the Complainant on 14.4.1999, the Complainant made the false and fabricated complaint against him in the Lokayukta office on 15.4.1999.

7. Opposing the above arguments, Learned Counsel appearing for

the Respondent/State supported the impugned judgment.

8. I have heard Learned Counsel appearing for the parties and perused the entire material available including the statements of witnesses with due care.
9. Present is a case of demand and acceptance of illegal gratification other than legal remuneration by misusing the office by a public servant/Appellant. 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.
10. In a case of illegal gratification, there are three essential ingredients to constitute the offence. They are (i) demand, (ii) acceptance and (iii) recovery.
11. In the instant case, it is not in dispute that at the relevant time, the Appellant was posted as a Beat Guard in the forest situated in Village Naragaon, where the Complainant was also residing. It is also not in dispute that the Complainant had demolished his old house and constructed there a new house in which he had used forest wood. It is also not in dispute that on 14.4.1999, the Appellant had registered a forest crime against the Complainant and on 14.4.1999 itself, he had made seizure of forest wood from the house of the Complainant.

12. With regard to the initial demand of bribe, it was the case of the prosecution before the Trial Court that on 9.4.1999, written complaint (Ex.P2) was filed by Complainant Ashok (PW3) in the office of Superintendent of Police, Lokayukta, Raipur. Complainant Ashok (PW3) admitted that he had made an oral complaint. The complaint (Ex.P2) was not written by him nor did he sign the said complaint (Ex.P2). Investigating Officer R.L. Armo (PW12) also admitted the fact that in the written complaint (Ex.P2), name of the Appellant is written with a different ink. From perusal of the written complaint (Ex.P2), it appears that name of the Appellant was added later on in a blank space with a different ink. Investigating Officer R.L. Armo (PW12), in his examination-in-chief itself, deposed that the written complaint (Ex.P2) was given to him on 14.4.1999 by the Incharge Superintendent of Police, Lokayukta, Raipur Mr. Banjara (not examined) for taking necessary action. In his Court statement, Complainant Ashok (PW3) has nowhere disclosed the date of recording of the conversation took place between him and the Appellant regarding the demand of bribe. The transcription (Ex.P4) of the said conversation was prepared on 15.4.1999. It is also not in dispute that there is no content in the transcription (Ex.P4) to show that any demand for bribe was made by the Appellant from the Complainant. It is also not in dispute that the written complaint (Ex.P5) was submitted by the Complainant on 15.4.1999. As admitted by Investigating Officer R.L. Armo (PW12), before that, the Appellant had registered a forest crime against the Complainant on 14.4.1999. Author of the written complaint (Ex.P2) Mr. Banjara has not been examined by the prosecution. Thus, making of the

written complaint (Ex.P2) itself is doubtful.

13. From perusal of the statements of Complainant Ashok (PW3), panch witnesses R.P. Sao (PW6) and Rajendra Swarnakar (PW9) and Investigating Officer R.L. Armo (PW12), it is clear that both the panch witnesses and other members of the trap party had stayed nearby the house of the Appellant and at the time of alleged transaction going on between the Complainant and the Appellant inside the house of the Appellant they were not present inside the said house and as admitted by them they did not witness giving of bribe money by the Complainant to the Appellant inside the house nor did they hear any conversation took place between the Complainant and the Appellant inside the house from the place where they were standing. From the evidence on record itself, it is clear that even after availability of a tape recorder and a blank cassette with the Complainant at the time of trap and despite having a direction to record the conversation, the Complainant did not record his conversation with the Appellant took place inside the house of the Appellant regarding the alleged demand of bribe. Though according to the case of the prosecution the Complainant by mistake forgot to record the conversation, looking to the fact that on earlier occasion he was well aware to record the conversation and knowingly that a forest crime had already been registered against him on 14.4.1999, by mistake he forgot to record his conversation with the Appellant took place on 15.4.1999 is doubtful. Therefore, there is substance in the defence of the Appellant that on 15.4.1999 itself also the Appellant had not made any demand

for bribe and on that day the Complainant had deliberately kept the tainted money in his pocket telling him that the same was for deposit of the fine.

14. 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.”

15. Further, in (2014) 13 SCC 55 (**B. Jayaraj v. State of Andhra Pradesh**), it was held by the Supreme Court as under:

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma v. State of A.P.*, (2010) 15 SCC 1 and *C.M. Girish Babu v. CBI*, (2009) 3 SCC 779.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any

official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.”

16. Recently, in (2021) 3 SCC 687 (**N. Vijayakumar v. State of Tamil Nadu**), reiterating the judgment of **C.M. Girish Babu case** (supra) and **B. Jayaraj case** (supra), it was held by the Supreme Court as follows:

“26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in *C.M. Girish Babu v. CBI*, (2009) 3 SCC 779 and in *B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d) (i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

17. In the light of above view taken by the Supreme Court, in the instant case also, it is clear that the prosecution has failed to prove its case of demand and acceptance of bribe money by the Appellant. Therefore, only on the basis of recovery of the tainted money, conviction of the Appellant is not sustainable. The finding of the Trial Court is not in accordance with the evidence available

on record as also not in accordance with law.

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

Sd/-

(Arvind Singh Chandel)
JUDGE