

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 351 of 2006

(From the Judgment and Order dt. 11.08.2006 passed by the learned Special Judge, Vigilance, Berhampur, Ganjam in T.R. Case No.105 of 1998.)

AFR **Purna Chandra Naik** **.....** **Appellant**
(Through his L.R.)

-Versus-

State of Odisha
G.A. (Vigilance) Department **.....** **Respondent**

Advocate(s) appeared in this case:-

For Appellant : Ms. Deepali Mohapatra,
Advocate

For Respondent : Mr. M.S. Rizvi,
Additional Standing Counsel for
Vigilance Department

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

The 17th November, 2022

SASHIKANTA MISHRA, J.

The Appellant questions the correctness of the judgment passed by the learned Special Judge (Vigilance) Berhampur, Ganjam on 11.08.2006 in convicting

him under Section 7 and Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and in sentencing him to undergo R.I. for one year and to pay a fine of Rs. 1,000/-, in default, to undergo R.I. for three months for the offence under Section 7 of the P.C. Act and to undergo R.I. for two years and to pay a fine of Rs. 2,000/-, in default, to undergo further R.I. for six months for the offence under Section 13(1)(d) read with Section 13(2) of the Act. Be it noted that the original appellant having died during pendency of the present appeal, his wife was permitted to prosecute the appeal in his place.

2. Briefly stated, the prosecution case is as follows;

On 12.12.1993 one K.T. Reddy, A.S.I. of police Puttasingi Police Station in the district of Rayagarh went to village Lade to investigate a criminal case. The A.S.I called the villagers for such purpose but most of the villagers being in the Church refused to do so. The A.S.I. therefore abused them in obscene language to which the ladies of the village protested. The A.S.I. also abused the ladies in obscene language for which they chased him. He ran away throwing his cap and diary on the road. On 15.12.1993, the accused-

appellant, being the then Officer-in-Charge of Puttasingi Police Station came to the village to enquire into the matter and called the villagers to the Police Station. 30 odd villagers went to the Police Station as per instruction during which, the accused –appellant demanded Rs.7,000/- (Rupees Seven Thousand) as bribe on the threat that the villagers would be arrested and sent to jail. On request by the villagers the accused-appellant reduced the amount initially to Rs.5,000/- (Rupees Five Thousand) and finally to Rs.3,000/- (Rupees Three Thousand) for settlement of the dispute to be paid before the ensuing New Year's day. On 21.12.1993, one Asiya Sabar (informant) along with some villagers went to the Police Station with Rs.500/- but the accused –appellant asked for the entire amount again putting them under the threat of arrest. The informant and the other villagers therefore collected Rs.50/- each from sixty families amounting to Rs.3,000/-. At this stage, the informant lodged a written report before the D.S.P. (Vigilance), Berhampur, Camp at Parlakhemundi stating the aforesaid facts whereupon the D.S.P directed the Inspector (Vigilance) to lay a trap. On the next day i.e.,

31.12.1993 at about 9.30 A.M. the formalities of the trap were prepared in presence of several official witnesses and the informant in the Vigilance Squad office at Parlakhemundi before whom the informant also reiterated the contents of the F.I.R. The trap was prepared and as per plan the informant and the accompanying witness namely, Krushna Barada was dropped near the Police Station while other members of the trap party followed them at close distance on foot. At about 1.40 P.M. the accompanying witness gave the pre-arranged signal whereupon the trap party members rushed inside and after disclosing their individual identities and giving personal search, challenged the accused to have received bribe of Rs.3,000/- from the informant. The accused fumbled and took the plea that the informant had pushed the bundle of notes in his hand and ran away with the same when he refused to take him. The fingers of the accused were dipped in sodium carbonate solution in a glass of water and when he did so, the colour of the solution turned to rose/pink. The informant-decoy informed that seeing him the accused inquired whether he had brought Rs.3,000/- or not and when he answered

affirmatively, the accused extended his right hand to accept the money whereupon he handed over the bundle containing Rs.3,000/- and the accused thereafter counted the notes and kept the bundle in his right side full-pant pocket and came out of his room but on seeing the Vigilance Officers rushing towards the Police Station, he went into the big hall in the police station and returned after sometime. Since the notes could not be found from the possession of the accused the Vigilance Staff searched and found the same kept under the battery of VHF set of the Police Station. Thereafter, the other formalities were complied with and the accused was arrested. After investigation and receipt of sanction for prosecution, charge-sheet was submitted against the accused under Sections-7 and 13(1)(d) read with Section-13 (2) of the P.C. Act.

3. The accused took the plea that the informant had attempted to forcibly put the tainted notes in his pocket but he returned the same to him who went away with the money. He further took the plea that the informant may have kept the tainted notes under the battery V.H.F. set.

4. To prove its case, prosecution examined six (6) witnesses and exhibited thirteen (13) documents besides five (5) material objects. Defence did not adduce any evidence, either oral or documentary.

5. The learned Special Judge framed the following points for determination;

- (i) Whether the accused had demanded Rs.3,000/- as bribe for settling the dispute of the villagers of Lade ?
- (ii) Whether on 31.12.1994 the accused accepted/obtained Rs.3,000/- from the decoy for settling the dispute ?
- (iii) Whether the accused had obtained /received bribe to show official favour to the informant and other villagers of Lade and the amount was not his official remuneration ?
- (iv) Whether the accused was a public servant and there is valid sanction for launching prosecution against him.

After considering the evidence on record in light of the settled position of law in relation to trap cases, learned Special Judge held that the evidence of P.Ws. 2, 3, 4, 5 & 6 are cumulatively adequate to prove that the accused had demanded bribe of Rs.3,000/- from the villagers for settling

the dispute. On point No.2, learned Special Judge referring to the evidence of P.Ws. 2, 3, 5 & 6 held that the accused had accepted Rs.3,000/-as bribe from the informant on the date of occurrence. Learned Special Judge disbelieved the defence plea that the informant had attempted to push the tainted G.C. Notes in his hands for which the colour of the solution changed to pink. On point No.3 it was held that the accused had obtained/received the amount to show official favour to the informant and the villagers for settling the dispute between them and his ASI. On point No.4 it was held that there was valid sanction for lodging prosecution against them.

6. On such findings, learned Special Judge held that the ingredients of Section-7 and Section 13(1)(d) read with Section-13(2) of the Act were established and therefore, the accused was convicted and sentenced as already stated hereinabove.

7. Heard Ms. Deepali Mohapatra, learned counsel for the accused-appellant and Mr. M.S. Rizvi, learned Additional Standing Counsel for the Vigilance Department.

8. Assailing the order of conviction, Ms. Mohapatra contends that the entire case, if viewed objectively, is nothing but a set up against the accused at the instance of the informant. Referring to the evidence of the informant/decoy (P.W.3) and the accompany witness (P.W.2) Ms. Mohapatra contends that when admittedly the tainted money was not found from the possession of the accused but from a place situated at a distance from the room in which the transaction is said to have taken place, the same raises reasonable doubts as regards the veracity of the prosecution story. According to the version of P.W.2, the accused had never gone out of his room and therefore recovery of the money under the V.H.F. set kept in the nearby hall cannot in any manner incriminate the accused. Under such circumstances, the defence plea ought to have been believed by the Trial Court, since it is more probable. Ms. Mohapatra, emphatically argues that none of the witnesses has stated to have seen the accused keeping the money under the V.H.F. Set. Ms. Mohapatra therefore contends that the order of conviction is wrong.

9. Per contra, Mr. M.S. Rizvi would argue that the informant/decoy fully corroborated the F.I.R relating to prior demand. The accompanying witnesses corroborated the version of the decoy as regards demand of Rs.3000/- at the spot by the accused and so also its acceptance by the accused. The credibility of the witnesses has not been impeached in any manner. Mr. Rizvi thus contends that when demand, acceptance and recovery of the tainted money was proved beyond any reasonable doubt, the Trial Court must be held to have rightly convicted the accused for the offences in question.

10. It goes without saying that for a charge under Sections 7 and Section-13(1)(d) read with Section 13(2) of the P.C. Act to succeed, prosecution must prove demand of illegal gratification, acceptance thereof by the accused and recovery of such gratification through clear and cogent evidence. In the instant case, prosecution appears to have clearly proved prior demand by the accused of Rs.3,000/- as bribe for settling the dispute between ASI Reddy and the villagers of Lade. The informant has corroborated the F.I.R. story in this regard. However, such prior demand alone is

not sufficient to bring home the charge as prosecution must also show demand by the accused at the time of detection. Reference to the evidence of the informant decoy (P.W.3) reveals that after reaching Puttasingi P.S. he and the accompanying witnesses met the O.I.C. (accused) who, on seeing him asked whether he had brought the money which he had demanded. The accompanying witness (P.W.2) corroborated such version of P.W.3 by stating that at the sight of the informant, the O.I.C. (accused) came out and asked as to why for about a month he (informant) did not bring the money. In cross-examination, he stated that he stood near the door of the Chamber of the accused and that there was a curtain and he stood behind the curtain. It must be kept in mind that the accompanying witnesses is an official witness not related to the informant in any manner. There is also otherwise no evidence to show that he was inimically disposed to the accused so as to depose falsehood against him. Thus, there is clear evidence regarding the demand of bribe by the accused at the spot.

11. It is the informant's version that on being asked by the accused whether he had brought the demanded money

or not, he handed over the tainted G.C. Notes to the O.I.C. who put it in his pant pocket. P.W.2 fully corroborates such version by stating that when the accused asked the informant about the money, he paid him Rs.3,000/- after counting those G.C. Notes numbering 30 in hundred rupees denomination and the accused took the tainted money in his pant pocket. There is nothing to disbelieve the version of P.Ws.2 and 3 in this regard. Coming to the defence plea that the informant had forcibly put the currency notes inside the pocket of the accused, as already stated, learned Special Judge disbelieved the same on the reasoning that it is highly improbable for a rustic villager to do so.

Ms. Mohapatra, learned counsel for the appellant has forcibly argued that the defence plea as above cannot be brushed aside on such general presumption rather, it would be more plausible to hold that being encouraged by the Vigilance Police, who were present in the vicinity, it was not entirely improbable even for a rustic villager to forcibly put the money in the pant pocket of a police officer just to implicate him in the case. Undoubtedly, the above argument seems attractive but on closure scrutiny, is found to be

untenable for the reason that in such event, it was for the defence to ascribe a definite motive for the informant to falsely implicate the accused. In other words, the informant must be shown to have harbored ill-will against the accused to such extent as to put him in trouble by falsely implicating him in a case of this nature. Moreover, no such evidence or even suggestion was given to the informant by the defense in cross-examination to support such plea. Therefore, the reasoning adopted by the learned Special Judge in rejecting the defense plea cannot be faulted with. Thus, this Court finds that prosecution, apart from proving demand of bribe by the accused also proved the acceptance thereof by the accused.

13. Coming to the recovery part, it is the prosecution case that the deceased accepted the tainted money offered by the informant and kept it in his pant pocket, but when he saw the trap party members rushing into the Police Station, he went to the hall and returned. After search, the tainted money was recovered under the V.H.F. set kept in the hall adjacent to the room of the O.I.C. Ms. Mohapatra has argued that there is absolutely no evidence that the

accused had kept the money under the V.H.F. set and the same is only being inferred. Secondly, as per the version of the P.W.2, the accused had never gone out of the room and therefore the question of he putting the tainted money under the V.H.F. Set does not arise.

14. Opposing such arguments, Mr. Rizvi has taken the Court to the evidence of P.W.2 who stated that initially the accused took the tainted money and kept it in his pant pocket, whereupon he (P.W.2) gave signal to the Trap Party Members, who rushed into the Police Station and the accused immediately put the tainted money near the battery set and went to the veranda of the Police Station. Mr. Rizvi submits that the defence argument that no one had seen the accused keeping money near the V.H.F. set is factually incorrect. Inasmuch as the informant (P.W.3) stated that the accused after receiving the money kept the same in his pant pocket and thereafter the trap party members reached the spot but before they reached the accused ran away into a room carrying the tainted G.C. notes. Referring to the spot map available in the Paper Book Mr. Rizvi submits that the V.H.F. set was kept on the hall adjoining the chamber of

the accused and by the side of the wall separating the hall and the chamber and therefore, was at a very short distance.

There is no dispute that the Trap Party Members after entering into the Police Station accosted the accused of taking of bribe and thereafter took his hand wash, handkerchief and pocket wash which turned to pink. Defense does not dispute this part of the evidence but contends that only because the hand wash etc. turned to pink cannot ipso facto lead to the inference that the accused had accepted the tainted money as it was not recovered from his possession.

15. Ordinarily, the above plea may have had some weight keeping in view the fact that the tainted money was recovered not from the pocket or the hand of the accused but from a different place. But then, it is for the defence to explain as to how the Sodium Carbonate Solution turned to pink when the hand wash, pocket wash and handkerchief wash were taken. This Court has already disbelieved the defense plea that the money was attempted to be forcibly thrust into the pocket of the accused by the informant.

Under such circumstances, it becomes more plausible to hold that after having received the tainted money when the accused realized that the Vigilance Officials were rushing into the Police Station, he rushed to the adjoining room (hall) and kept the money under the V.H.F. set and came out again. Be it noted here that the V.H.F set was kept at a place not very far from the room of the accused or from the verandah. So, it is quite possible for him to conceal the tainted money and come back to the veranda within a very short time. P.W.5, who is also an official witness not connected with the Vigilance Department stated that after getting the signal, the Trap Party Members rushed inside the Police Station and met the accused on the veranda and at that time he was coming from the common room (hall) of the Police Station. There is no reason to disbelieve the version of P.W.5 or even P.W.2 in this regard. Thus, what transpires from the evidence and appears as the most probable thing to have happened is, the accused accepted the tainted money after making the demand from the informant and kept it in his pant pocket but on realizing that the Trap Party Members were rushing to the Police

Station, he quickly went to the adjoining hall and kept the money under the V.H.F. set to avoid detection. This easily explains why the colour of the chemical solution turned to pink when the hand-wash, handkerchief wash and pocket wash of the accused were taken. Had the money not been recovered at all, the change of colour of the solution on hand wash/pocket wash/handkerchief wash being taken would have been inconsequential but not so in the present case wherein there is clear evidence of the tainted money being recovered in close proximity to the place where it was given and accepted initially. This Court finds that the learned Special Judge has rightly appreciated the evidence on record to arrive at similar finding.

16. Thus, from a conspectus of the analysis made hereinbefore, this Court finds that the prosecution has fully established its case against the accused beyond reasonable doubt. The grounds raised by the defence to challenge the findings are not valid or good enough to persuade this Court to take a different view than what was taken by the Court below.

17. In the result, the Appeal fails and is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 17th November, 2022/ B. Behera, Sr. Steno

