

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLP No. 13 of 2019

From the judgment and order dated 16.05.2018 passed by the Special Judge, C.B.I.-II, Bhubaneswar in T.R. Case No.04 of 2006/R.C. No. 25(A) of 2005.

Republic of India Petitioner

-Versus-

Sri Santosh Nayak Opp. Party

For Petitioner: - Mr. Sarthak Nayak
Special Public Prosecutor
(CBI)

For Opposite party: - Mr. H.K. Mund, Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Order: 16.02.2022

S. K. Sahoo, J. Heard Mr. Sarthak Nayak, learned Special Public Prosecutor (CBI) and Mr. H.K. Mund, learned counsel for the opposite party.

2. This leave petition under section 378 of Cr.P.C. has been filed by the Republic of India seeking for leave to file an appeal against the impugned judgment and order dated

16.05.2018 passed by the Special Judge, C.B.I.-II, Bhubaneswar in T.R. Case No.04 of 2006/R.C. No.25(A) of 2005 in acquitting the opposite party Santosh Nayak of the charges under sections 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter '1988 Act').

3. The opposite party faced trial for the aforesaid offences on the accusation that he accepted bribe money of Rs.6,000/- (rupees six thousand) from the informant S.Chandrasekhar, who is the son-in-law of the deceased employee Late Dula Oram for disbursement of widow/children pension under Employees' Pension Scheme of EPF Organization in favour of his mother-in-law Smt. Tersa Oram (P.W.11). It is the case of the informant that his late father-in-law Dula Oram was working as a worker in M/s. Ores India Ltd., a private contractor in Kalta Iron Ore Mines. The said Dula Oram expired on 24.09.1994 and his widow Smt. Tersa Oram had submitted an application for disbursement of widow/children pension under Employees' Pension Scheme of EPF Organization and the said application was received in the EPFO Sub-Regional Office, Rourkela on 06.02.1996 and was processed. The arrear pension of Rs.17,159/- for the period from 25.09.1994 to 31.10.1996 was paid to P.W.11 and her two children and thereafter, pension

for the months from November 1996 to May 1997 was also paid. It is the specific case of the informant that P.W.11 could able to get Rs.22,000/- (twenty two thousand) as pension for the period from 2003 to 2005, but the arrear pension for the period from 1994 to 2003 was not paid till 03.06.2005. It is the further prosecution case that since P.W.11 was an illiterate lady and was not in a position to pursue the matter at EPFO Office, Rourkela, she entrusted her son in-law, the informant to pursue the matter of arrear pension. It is the specific case of the prosecution that the informant visited the EPFO Office, Rourkela on 03.06.2005 to enquire about the position of arrear pension and he met the opposite party in his office. On enquiry, the opposite party told the informant that since the matter was an old one and complicated, if latter would pay a bribe of Rs.6,000/- (six thousand) to him, he would process the file, so that payment of arrears pension would be released to P.W.11 at the earliest. The opposite party also intimated the informant that the pension amount would be around rupees one lakh and if the informant failed to pay the said amount, the file would not be processed. It is the specific case of the prosecution that the opposite party told the informant to give him the demanded bribe of Rs.6,000/- on 06.06.2005 at the restaurant near SRP Office in Railway Colony,

Rourkela at 10.00 a.m. when the opposite party would come on his way to his office. As the informant was not willing to pay any bribe to the opposite party, being aggrieved, he submitted a F.I.R. before the D.S.P., C.B.I, Rourkela Unit on 06.06.2005, who in turn forwarded the said F.I.R. to the S.P., C.B.I., Bhubaneswar to take further action. Basing on such F.I.R., the S.P., C.B.I., Bhubaneswar registered R.C. Case No. 25(A) of 2005 and took up investigation of the case. After the trap was laid and the formalities of preparation for laying the trap was over, they proceeded to the office of the opposite party and it is the prosecution case that the trap was successful and tainted note was recovered from the possession of the opposite party which he had kept in his pocket after accepting the same from the informant and the hand wash of the opposite party taken in sodium carbonate solution turned pink. Hand wash in sample bottles were collected and sealed which was sent for chemical analysis. On completion of investigation, sanction order to prosecute the opposite party was obtained and charge sheet was submitted against the opposite party.

4. The informant in the case, namely, S.Chandrasekhar could not be examined as he expired before commencement of the trial.

During course of trial, the prosecution examined eleven witnesses. P.W.1 N. Kishore Kumar, who was working as Asst. Accounts Officer, EPFO Sub-Regional office, Rourkela, is a witness to the note prepared by the opposite party in the pension payment order file of Late Dula Oram. P.W.2 Pradeep Kumar Mishra, who was the Regional Provident Fund Commissioner, Rourkela is a witness to the seizure of letters and office orders as per seizure list Ext.2. P.W.3 Sarat Kumar Behera, who was the Section Supervisor, Branch Office, EPFO, Rourkela, is a witness to the seizure of one pension file. P.W.4 Satyabrata Barik was the Senior Social Security Assistant of EPFO, Rourkela, who dealt with the pension file (Ext.1). P.W.5 Nirmal Kumar Prasad was the Regional Provident Fund Commissioner, Ranchi who accorded sanction to prosecute the opposite party and proved the sanction order (Ext.7). P.W.6 Kishore Kumar Pradhan stated to have given a note calculating the arrear pension of P.W.11 and her children, which was approved and file was given to the opposite party. P.W.7 Akhila Mohan Panda is another independent witness to the entire pre-trap and post-trap proceeding and is a witness to the demand and acceptance of bribe money. P.W.8 Biswa Ranjan Paikray is the over hearing witness and is a witness to the transaction of

bribe money. P.W.9 L.T. Salu, who was the Inspector, C.B.I., Rourkela Unit, is a witness to the demand and acceptance of bribe money. P.W.10 Prasanna Kumar Panigrahi is the T.L.O. -cum- Investigating Officer and P.W.11 Tersa Oram is the widow of Late Dula Oram.

The prosecution exhibited sixteen numbers of documents. Ext.1 is the note prepared by the opposite party, Exts.2, 4, 5 are the seizure lists, Ext.3 is the copy of the documents produced by P.W.2, Ext.6 is the personal file of opposite party, Ext.7 is the sanction order, Ext.8 is the list, Ext.9 is the pre-trap memorandum. Ext.10 is the post-trap memorandum, Ext.11 is the spot map, Ext.12 is the formal F.I.R., Exts.13 and 14 are the search list, Exts.15 and 16 are the chemical examination reports.

The prosecution proved six material objects. M.O.I, M.O.II and M.O.III are the sample bottles, M.O.IV is the cover containing G.R. notes, M.O.V is the bottle containing pant pocket wash of opposite party and M.O.VI is the cover containing pant of the opposite party.

5. The defence plea of the opposite party is that the opposite party had sold his old T.V. set to the informant and the latter handed over the sale proceeds of Rs.6,000/- to the

opposite party on the day of trap and the amount in question was not the bribe amount.

One witness i.e. D.W.1 Santosh Nayak examined on behalf of the defence.

6. The learned trial Court after carefully analyzing the materials on record and the evidence of all the witnesses, has been pleased to hold that P.W.11 Tersa Oram had never entrusted the informant S. Chandrasekhar to look after her pension matter nor had she handed over any document to the informant for getting the pension. Rather, P.W.11 had given one document to her son in order to get pension of her husband from one office at Rourkela, but the prosecution has failed to examine and cite the son of P.W.11 who is another claimant of the family pension, as a witness. It was held that from the evidence of P.W.1 as well as P.W.11, it is seen that the informant had no role to play to look after the pension matter of P.W.11. It was further held that from the evidence of P.W.2, it is clear that on 03.06.2005, the pension file of P.W.11 was not with the opposite party but from the evidence of P.W.6, it is forthcoming that it was with the Assistant Commissioner. Thus, the prosecution has failed to prove that the opposite party had demanded and accepted any bribe money from the informant voluntarily and consciously, and

the evidence of P.Ws. 7, 8, 9 and 10 cannot be safely relied upon to conclude beyond reasonable doubt that the opposite party had accepted cash of Rs. 6000/- (rupees six thousand) from the informant as bribe or illegal gratification. It was further held that the oral as well as documentary evidence of the prosecution coupled with the circumstances leading to trap and recovery of the tainted government currency notes from the opposite party is not a definite pointer to the conclusion that the opposite party had accepted illegal gratification or bribe money from the informant. The learned trial Court analysed the evidence of P.W.1 and held that nothing incriminating has been brought out in the cross-examination by the prosecution to disbelieve his version. The learned trial Court found P.W.7, P.W.8 and P.W.9 to be unreliable witnesses and further held that the version of these witnesses along with the evidence of P.W.10 as regard demand of bribe on 03.06.2005 and 06.06.2005 was not free from reasonable doubt and accordingly, held the opposite party not guilty.

7. Mr. Sarthak Nayak, learned Special Public Prosecutor (CBI) contended that the impugned judgment and order of acquittal is perverse and not sustainable in the eye of law. He argued that law is well settled that even if the decoy did not

support the case of the prosecution, but if the evidence of the shadow witness is clinching and believable, basing on the corroborative evidence of trap laying officer, the conviction can be sustained. Learned counsel further submitted that shadow witness has stated about the demand of money made by the opposite party at the spot of trap and also offering of the money by the decoy to the opposite party on the date of occurrence towards bribe and further stated about the recovery of the same from the possession of the opposite party. It is further argued that the hand wash of the opposite party which was taken in the sodium carbonate solution turned pink which justified the presence of phenolphthalein powder in the hands of the opposite party by touching the bribe money and when the evidence of the official witnesses are clinching, the order of acquittal which has been passed mainly basing on the defence plea is not sustainable. He placed reliance on the decision of the Hon'ble Supreme Court in the case of **Vinod Kumar -Vrs.- State of Punjab reported in A.I.R. 2015 Supreme Court 1206.**

Mr. H.K. Mund, learned counsel for the opposite party, on the other hand, supported the impugned judgment and contended that in the present case of this nature, the demand of bribe, acceptance and recovery thereof are the three essential

ingredients to establish the charge. He further submitted that the stand of the opposite party in the learned trial Court was that he had received the amount towards sale of an old TV and since acceptance and recovery were admitted by the opposite party, his hand wash is also of no consequence. Learned counsel further submitted that the only question that needs careful scrutiny is as to whether the opposite party demanded the amount as bribe or he received the same towards sale consideration for the TV. Learned counsel for the opposite party further submitted that demand is the sine-qua-non in a prosecution under sections 7 and 13(1)(d) of the Act. According to him, since the informant was not examined, the allegation relating to demand of bribe on 03.06.2005 was not proved and therefore, the only thing remains to be seen as to whether the opposite party demanded the bribe on 06.06.2005 at the time of trap. Placing reliance on the evidence of D.W.1, it is argued that the learned trial Court rightly accepted the defence plea.

8. In the case at hand, the acceptance of Rs.6,000/- by the opposite party from the informant (who is dead) is not disputed. It is also not disputed that there was recovery of Rs.6,000/- from the opposite party. The only issue that arises for consideration is whether such amount was demanded by the

opposite party from the informant as bribe for processing the arrear pension bill of the father in-law of the informant as per the prosecution case and it was paid on the date of trap or the amount in question was the sale price of old T.V. as per the defence plea.

Now, let me analyze the demand of bribe as stated by the shadow witness (P.W.8). In his deposition, he has stated that at the time of trap when the opposite party came to the spot, the informant asked him to process the pension paper and the opposite party demanded the money and the informant gave the money. The conversation between the informant and the opposite party was in Hindi as stated by P.W.8 who has not spoken about the exact words used during such conversation. The evidence of P.W.8 that when the opposite party came in a motor cycle, the informant asked him to process the pension papers is not corroborated by P.W.7 and P.W.9, though both of them stated about the demand. Section 60 of the Evidence Act mandates that oral evidence must be direct and if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it. Therefore, what is admissible in evidence is the exact words heard by P.W.8 during the conversation and not the opinion formed by him or inference drawn by him from the

said conversation. The exact words uttered were required to be brought on record clearly, otherwise it is difficult to accept the demand part particularly when the informant could not be examined on account of his death. In my humble view, demand appears to be in consonance with the defence plea that the opposite party was due to get Rs.6,000/- from the informant towards the sale amount of the T.V., which has been proved through D.W.1. Thus, in this case demand of bribe is not proved.

From the evidence of Tersa Oram (P.W.11), it does not appear that she had entrusted the informant to look after her pension matters rather she stated to have given one document to her son for such purpose. There is also no clinching material on record that any work relating to the pension of Tersa Oram (P.W.11) was pending with the opposite party at the time of alleged occurrence rather as per the evidence of P.W.1, the file was passed by him to the Asst. Commissioner for taking further action. Therefore, no work was pending at the level of opposite party to make a demand of bribe rather the available circumstances appearing on record negatives the theory of demand of bribe.

In the case of **Kishore Kumar Swain -Vrs.- State of Odisha (Vigilance) reported in (2018) 69 Orissa**

Criminal Reports 925, it is held that mere receipt of the amount by the accused is not sufficient to fasten his guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. The burden rests on the accused to displace the statutory presumption raised under section 20 of the 1988 Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in section 7 of the 1988 Act. In a case where the accused offers an explanation for receipt of the alleged amount, while invoking the provisions of section 20 of 1988 Act, the Court is required to consider such explanation on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. Therefore, to determine whether all the ingredients of the offences i.e. demand, acceptance and recovery of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in its entirety and the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the

prosecution, then burden of proving the defence shifts upon the accused. The proof of demand of illegal gratification is the gravamen of the offences under sections 7 and 13(1)(d) of the 1988 Act and in absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would not be sufficient to bring home the charge under these two sections of the 1988 Act. (Ref:- **State of Punjab -Vrs.- Madan Mohan Lal Verma reported in A.I.R. 2013 S.C. 3368, State of Maharashtra -Vrs.- Dnyaneshwar reported in (2009) 44 Orissa Criminal Reports 425, Punjabrao -Vrs.- State of Maharashtra reported in A.I.R. 2002 S.C. 486, V. Sejappa -Vrs.- State reported in A.I.R. 2016 S.C. 2045, Panalal Damodar Rathi -Vrs.- State of Maharashtra reported in A.I.R. 1979 S.C. 1191, Mukhitar Singh -Vrs.- State of Punjab reported in (2016) 64 Orissa Criminal Reports (S.C.) 1016, State of Kerala -Vrs.- C.P. Rao reported in (2011) 6 Supreme Court Cases 450**).

The factual scenario in the case of **Vinod Kumar** (supra), reliance on which was placed by the learned Special Public Prosecutor is different than the present case. The Hon'ble Supreme Court in that case held that the prosecution proved the

demand, acceptance and recovery of the amount, which is not the case here.

9. Law is well settled as held in case of **Babu and others -Vrs.- State of Uttar Pradesh reported in A.I.R. 1983 Supreme Court 308** that in appeal against acquittal, if two views are possible, the Appellate Court should not interfere with the conclusions arrived at by the trial Court unless the conclusions are not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the Appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The Appellate Court, therefore, should be slow in disturbing the finding of fact of the trial Court and if two views are reasonably possible on the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.

Thus, an order of acquittal should not be disturbed in appeal under section 378 of Cr.P.C. unless it is perverse or unreasonable. There must exist very strong and compelling

reasons in order to interfere with the same. The findings of fact recorded by a Court can be said to be perverse, if the findings are arrived at by ignoring or excluding relevant materials on record or by taking into consideration irrelevant/inadmissible materials. The finding can also be said to be perverse, if it is against the weight of evidence, or if the finding outrageously defies logic so as to suffer from the vice of irrationality.

The right of appeal against acquittal vested in the State Government should be used sparingly and with circumspection and it is to be made only in case of public importance or where there has been a miscarriage of justice of a very grave nature.

In case of **Bannareddy and others -Vrs.- State of Karnataka and others reported in (2018) 5 Supreme Court Cases 790**, it is held as follows:-

“10....It is well-settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself”.

In case of **Ghurey Lal -Vrs.- State of Uttar Pradesh reported in (2008) 10 Supreme Court Cases 450**, it is held as follows:-

75....The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

10. After going through the impugned judgment and order of acquittal passed by the learned trial Court, it seems that the learned Court has passed a reasoned judgment after proper appreciation of the evidence and I find no infirmity or illegality or perversity in the impugned judgment, rather the order of acquittal of the opposite party is quite justified in the facts and circumstances of the case and therefore, I am not inclined to grant leave to the petitioner Republic of India to prefer any appeal against the impugned judgment and order of acquittal.

Accordingly, the CRLLP petition stands dismissed.

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S.K. Sahoo, J.