

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.362 of 2014

Arising Out of PS. Case No.-5 Year-2002 Thana- C.B.I CASE District- Patna

1. Jibachh Mandal Son of Late Raj Nath Mandal Resident of Village - Amhi, P.S. - Ghoghardiha, District - Madhubani.
2. RITESH KUMAR SINGH S/O LATE SHEO BALAK SINGH @ SHIV BALAK SINGH Resident of Village- Alampur, Post- Garhsisai, P.S.- Vidyapati Nagar, District- Samastipur.

... .. Appellant/s

Versus

The Union Of India through C.B.I. A.C.B. Patna, Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Soni Srivastava, Mr. Ravi Bhardwaj & Ms. Sarandha Suman, Advocates
For the Respondent/s	:	Mr. Sourendra Pnadey, SC, CBI

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 28-08-2023

This appeal is directed against the judgment of conviction and order of sentence dated 30th June, 2014 passed in Special Case No. 02 of 2022 arising out of R.C. No. 5(A)/ 2002 by Sri Vijay Kumar Srivastava, Special Judge III, Patna, whereby and whereunder the appellants have been convicted for the offence under sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 .

Appellant no. 1 Jibach Mandal has been sentenced to undergo rigorous imprisonment for 3 years under section 13(2) of the Prevention of Corruption Act and to pay fine of Rs.



10,000/- and in default in payment of fine to undergo simple imprisonment for 2 months. He has further been sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 5,000/- for the offence under section 7 of the P.C. Act and in default in payment of fine to undergo simple imprisonment for 1 month.

Appellant No. 2 Sheo Balak Singh was sentenced to undergo rigorous imprisonment for 2 years and fine of Rs. 5000/- for the offence under section 13(2) of the P.C. Act and in default of payment of fine to undergo simple imprisonment for one month. He has further been sentenced to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 1000/- for the offence under section 7 of the P.C. Act and in default of payment of fine to undergo simple imprisonment for 15 days.

I.A. No. 2 of 2021 filed for substitution of the legal heirs of appellant no. 2 (since deceased) was allowed by order dated 25.07.2022 and the legal heir of appellant no. 2 was permitted to be substituted after expunging the name of appellant no. 2 from the memo of appeal.

2. The prosecution case, in brief, is that one Ashok Kumar Rai filed a written complaint before SP, CBI Patna Branch on 19.03.2002 alleging therein that on 01.09.2001, he



had filed an application in the office of Sub Divisional Engineer for village public telephone connection. The complainant met appellant Sheo Balak Singh regarding telephone connection who disclosed that after order of the SDE, demand note would be issued. It was further alleged that Sheo Balak Singh demanded Rs. 500/- for himself for issuing of demand note and told that the SDE will also take money for the same. When the complainant met J. Mandal SDE, he demanded Rs. 5000/- as bribe money for the said work. It was further alleged that on 18.03.2002 when the complainant met the appellants, they flatly refused to give telephone connection without payment of bribe money. It was alleged that appellant no. 1 agreed to take Rs. 2000/- with direction that the rest of the amount would be paid soon. The complainant was not willing to pay the bribe and requested the S.P. to take appropriate action in the matter.

3. Charges were framed against both the appellants under section 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988. The appellants pleaded not guilty to the charges and claimed to be tried.

4. In support of its case, the prosecution has examined altogether 14 witnesses.

P.W. 1 Ashok Kumar Rai is the complainant of the



case who proved the complaint petition (Exhibit-1)

P.W. 2 Bimal Chandra Purkait, Junior Scientific Officer of CGSL Calcutta conducted scientific test of the contents of hand washes of both the appellants and submitted his report Exbt. 4.

P.W. 3 Anil Kumar is the authority who accorded sanction (Exhibit-5) for the prosecution of appellant no. 2 Sheo Balak Singh.

P.W. 4 Dr. D.P. Seth is the authority who issued sanction order (Exhibit-5/1) for the prosecution of appellant no. 1 Jibach Mandal.

P.W.5 Awadhesh Kumar is Sub Inspector, CBI, who is said to have conducted verification of the complaint petition of P.W. 1 and submitted his verification report (Exhibit-6).

P.W. 6 Chandra Bhushan Jha, P.W. 8 Ram Ashish Dash, P.W. 9 Ratneshwar Prasad Rai and P.W. 10 Shiv Nandan Lal Karn are officials and staff of Telephone Office Dalsinghsarai.

P.W. 7 Vijay Kumar Ghosh and P.W. 11 Rajendra Paswan are officers of State Bank of India Samastipur who acted as independent witness to the trap operation.

P.W. 12 P. Chakraverty, Inspector CBI and P.W. 13



Nagendra Prasad, the trap laying officer, who have deposed about the trap operation.

P.W. 14 R.P. Pandey, Inspector CBI, is the Investigating Officer who submitted charge-sheet against the appellants.

5. After closure of the prosecution case, statement of appellants were recorded under section 313 Cr.P.C. wherein they denied the allegations and incriminating circumstances against them.

6. The defence in support of its case has also examined 10 witnesses including appellant no. 1 Jibach Mandal as D.W. 10. D.W. 1 to D.W. 6 have been examined on behalf of appellant no. 2 Sheo Balak Singh and the rest in support of the defence of appellant no. 1 Jibach Mandal.

7. During course of oral argument on behalf of the prosecution and the defence, a written memo or argument under section 314 Cr. P.C. was submitted in the trial Court.

8. The learned Special Judge delivered the judgment on 20.06.2014 holding both the appellants guilty of the charges framed, convicted them and sentenced to undergo imprisonment alongwith payment of fine.

9. The appellants have assailed the judgment of the



trial Court on basis of the following grounds :

- (i) Whether bribe can be given or demanded in a matter where the work was complete even before giving or demanding such bribe ?
- (ii) As per C.B.I. manual, before taking action on any complaint its verification is necessary. Whether any verification was made in the present case, and if made, was it as per the rules ?
- (iii) Whether the entire process of seizure is vitiated as necessary articles were not seized and there is no signature of the accused persons on the seizure list ? The witnesses to the seizure list have turned hostile.
- (iv) The independent witnesses, who are senior officers of the nationalized banks and as such are reliable, they have not supported the prosecution story.
- (v) Many VPT connections were issued but except in one case no one talked about the demand of bribe. CBI did not even do any investigation on such an important aspect.
- (vi) Complaint was brought against demand of bribe for demand note but after seeing that the demand note had already been issued, later the matter of an advice note was brought alleging that the bribe has been demanded for advice note.
- (vii) It was the specific case of the defence that a false case has



been instituted due to previous enmity and all the prosecution witnesses were also questioned in this regard. Also, in the statement under section 313 of the Code of Criminal Procedure, the Court had asked in this regard . The defence also gave its evidence on this point.

10. It has been stated on behalf of the prosecution that it is a well proved case. The process of granting VPT connection was to be completed in several stages in which issuing demand note was only one stage. So far as the issue of witnesses turning hostile is concerned, they have turned hostile after a long period of time. So far as previous enmity is concerned, it is only a suggestion which has been denied by all the witnesses.

11. Heard both the sides and perused the record.

12. As per CBI Manual, the process of verification is as follows:

8.6 *The following categories of complaints may be considered fit for verification:-*

(i) Complaints pertaining to the subject-matters which fall within the purview of CBI either received from official channels or from well-established and recognized public organizations or from individuals who are known and who can be traced and examined.

(ii) Complaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of CBI, which can be verified.



8.7 If any complaint against a Minister or former Minister of the Union Government, or the Union Territory is received in any Branch, it should be put up to the Director, CBI, for appropriate orders. The relevant file of the Branch should remain in the personal custody of SP concerned. In case the complaints are received against members of lower judiciary these may be forwarded to the Registrar of the High Court concerned and the complaints received against members of higher judiciary may be forwarded to Registrar General of Supreme Court through the Joint Director (Policy).

Process of Verification

8.8 The complaints registered for verification, with the approval of the Competent Authority, would only be subject to secret verification. The SsP and the verification officers should ensure that the departmental records are examined discreetly, so that secrecy of the verification is maintained. It is advisable to consult the records informally, by contacting the concerned CVO/Head of the Department. During verification of a complaint, written requisitions should be avoided. In case, it is absolutely necessary to do so, the requisition must go to the concerned Vigilance Officer under the signature of the SP.

8.9 Secret verification should be completed within three months of the receipt of the complaint. In complicated matters, a time of four months may be taken with prior permission of the DIG concerned. To ensure proper monitoring, the DIsG should review all pending Complaints every month and send a report to the Head Office with their comments on the complaints pending verification for more than three months.

13. Here the complaint was received on 19.03.2002 and the report of verification of facts was submitted on 22.03.2002. On the same day a formal FIR had also been lodged.



As per the rules, the verification is to be completed within 3 months, and if necessary, with permission of the senior officer, it is to be completed in 4 months, but here the entire verification process was completed in just 3 days.

Completing the verification in 3 days instead of 3 months also shows the conscientiousness and dedication of the officer, who conducted the verification, towards his duty, but it also creates a doubt whether it was necessary to execute the verification in such a hurry.

Some other points also cast doubt on this verification process like non-registration of the complaint (Exhibit-1), non-endorsement and non mentioning of as to whom the verification work was handed over.

Normally, while in sending official letters to senior officer, the letter number and date are compulsorily mentioned on the letter, but here the verification report (Exhibit-6) was handed over to the senior official (S.P.) without mentioning any letter number and date.

There is no mention in the formal F.I.R. (Exhibit-11) also as to whom the complaint was handed over for its verification and as to when the verification report was submitted.



14. During Argument, learned counsel for the C.B.I. had stated that work of the organization is conducted in confidential manner, so sometimes formalities are not completed to maintain confidentiality.

But here the question of confidentiality does not arise. Formal FIR is filed in the court, in any case it cannot be said to be a confidential document, and non-mentioning of important things related to verification in it, brings the entire verification process under suspicion.

15. The complaint was filed alleging that bribe is being demanded for issuing demand note. But the evidence of P.W. 6 Chandra Bhushan Jha is that in this respect the letter of acceptance (Exhibit-8) has been issued on 30.01.2002. When letter of acceptance was issued on 30.01.2022, there is no reason for demanding bribe on 18.03.2022.

16. A new term Advice Note firstly came in the evidence of P.W.5 Awadhesh Kumar, whereas all other witnesses examined earlier have clearly used the word Demand Note. In Complaint verification report and formal FIR, at many places, Demand Note has been used. It is clear that the prosecution was improving the facts.

17. Out of total 14 prosecution witnesses, two are



independent. P.W. 7 Vijay Kumar Bose, manager SBI and P.W. 11 Rajendra Paswan, Branch Manager, SBI. They both do not support the prosecution story and have been declared hostile. They do not state anything about any recovery in front of them. It is noteworthy that both of them are senior officers of SBI and are independent witnesses of the case.

18. P.W. 13 Nagendra Prasad is the investigating officer of this case. It is his evidence that in course of investigation he formed the team.

It was said to Rajendra Paswan (P.W. 11), one of the independent witnesses, that he will go to the SDE, Dalsingsarai office alongwith the complainant as a shadow witness and to hear and watch the conversation made between the accused and the complainant. The another independent witness, V.K. Bose (PW-7) was said to go to the BSNL, Telephone Exchange, Dalsingsarai alongwith the complainant as shadow witness and to hear and watch the conversation made between the complainant and the accused. Sub-Inspector, Awadesh Singh was also directed to remain with the complainant all the time.

Here it is worth considering that when two teams were constituted for the raid; one had to go to the office and the



other to the exchange, then why both of them went together to the office first and why went to the exchange from there after one hour. The matter is concerned with the Department of Telecom where any other facility may not be available, but there must have been the facility of making telephone call and any employee could have given this information to the SDE. Even if the call was not made in front of police due to fear, then after their departure for the exchange, any employee must have informed as it is the evidence of investigating officer that the exchange is 3 kilometers away from the office.

19. The prescribed procedure of seizure of was not followed. Neither the signatures of the accused were taken on the seizure list nor its copy was given to them although they were the officer and employee of the department of Telecom.

20. Important articles were not seized such as pants or shirts, though it has come that rupees were kept in the pockets of pants and shirts.

21. Even the evidence of witnesses are not same on the point of recovery; some have stated about recovery from hand, some from pocket. Some talk about its lying on the ground, some talk about its lying on the table. On the point of recovery of clothes also, evidence of witnesses are different.



Some have stated that it was kept in Malkhana and some have stated that clothes were not seized.

22. The trial court was of the clear view that the defense could not prove the point of previous enmity. But where 10 witnesses are examined by the defence, a total 24 documents were brought as evidence and there is statement of the accused under section 313 of the Code of Criminal Procedure in which the accused has stated in detail about the entire matter, the court did not consider the same. Even the CBI did not conduct any investigation on this point. Further, the CBI at the time of verification did not make any verification on the point that complainant could also make a false complaint due to previous enmity.

Normally, the evidence of the defence is not very important in the trial and the prosecution itself has to prove its case beyond the shadow of reasonable doubt. But here, for the above reasons, it can be said that a shadow of doubt is cast on the prosecution case.

23. For the above reasons the appeal is allowed. Accordingly the judgment of conviction and order of sentence dated 30th June, 2014 passed in Special Case No. 02 of 2022 arising out of R.C. No. 5(A)/ 2002 by Sri Vijay Kumar



Srivastava, Special Judge III, Patna is, hereby, set aside.
Appellant Jibachh Mandal is on bail. His bail bonds are cancelled and he is discharged from the liability of his bail bonds.

24. Here, I would like to thank Mr. Sourendra Pandey, learned counsel for the CBI and Ms. Soni Srivastava, learned counsel appearing for the appellant assisted by Mr. Ravi Bhardwaj and Ms. Sarandha Suman, learned counsels for rendering assistance in the present appeal.

(Arvind Srivastava, J)

mcv/-

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