



NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 23/09/2021Judgment delivered on: 21 / 01 /2022**CRA No. 458 of 2001**

- Laxman Singh S/o. Gujru Singh, aged 32 years, Head Constable No. 808, Thana Jaijaipur, District Bilaspur.

---- Appellant**Versus**

- State of Chhattisgarh, through the District Magistrate, Raipur (C.G.)

---- Respondent

For Appellant
For State

: Mr. B.D. Guru, Adv.
: Mr. Ishwar Jaiswal, PL

Hon'ble Smt. Justice Rajani Dubey**CAV Order****21/01/2022**

1. This appeal arises out of the impugned judgment of conviction and order of sentence dated 11.05.2001 passed by learned First Additional Sessions Judge, Raipur, District Korba (Special Judge, Prevention of Corruption Act) in Special Criminal Case No. 45/91 whereby and whereunder, learned First Additional Sessions Judge convicted the appellant under Section 161 of the IPC and Section 5(1) (d) read with Section 5 (2) of Prevention of Corruption Act and sentenced him to undergo R.I. for 1 year and fine of Rs. 1,000/- and R.I. for one year and fine of Rs. 1,000/- with default stipulation, respectively.

2. As per the prosecution case, complainant Shyam Lal lodged a



report before the police station JaiJaipur against his nephew Bala Ram Kurmi for causing the damage to his house. It is further said that to initiate action on the report, the accused/appellant was demanding Rs. 1,000/-. The complainant was asked to deposit at least Rs. 500/- for which the complainant lodged the report vide Ex P-1 against the appellant. After completion of investigation charge sheet was filed against the appellant for the offence punishable under Section 161 of IPC and Section 5(2)(d)/(5)(2) of Prevention of Corruption Act.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 4 witnesses. Statements of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case.

4. After examination of oral and documentary evidence, learned trial Court convicted the appellant under Section 161 of the IPC and Section 5(1)(d) read with Section 5 (2) of Prevention of Corruption Act sentenced him to undergo R.I. for 1 year and fine of Rs. 1,000/- and R.I. for one year and fine of Rs. 1,000/- with default stipulation, respectively. Hence, the present appeal filed by the appellant.

5. Learned counsel for the appellant submits that the impugned conviction and sentence is contrary to law and evidence available on record. The prosecution has failed to prove demand and acceptance of the illegal gratification by the appellant. On the basis of evidence on record, the trial Court ought to have held that the appellant has been falsely implicated because he has taken prohibitory action under Section 107 and 116 of Cr.P.C. against the complainant. Counsel for the appellant has also made his objection regarding the reliability of the evidence of Shyam Lal (PW-2). He would next



contend that the seizure of the currency note from the appellant has not been proved in accordance with law. The prosecution has failed to prove that the complainant has lodged any report on 28.01.1986 against on Bala Ram regarding the demand of illegal gratification. Defence witness Jugal Kishore has clearly deposed that the currency notes were illegally trusted into the pocket of the appellant. The entire prosecution story is highly improbable and un-natural, the presumption against the appellant is not available in the facts and circumstances of the case and in spite of the said rule of evidence the prosecution has failed to prove its case beyond all reasonable doubts, therefore, the judgment and conviction is liable to be set-aside.

6. In support of his argument, learned counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the case of **Khilli Ram Vs. State of Rajasthan** reported in **1985 (1) SCC 28** and **F.U. Siddique (Dead) Vs. State of C.G.** reported in **2018(2) C.G.L.J. 400.**

7. Learned State counsel has supported the impugned order passed by the trial Court.

8. Heard counsel for both the parties and perused the material available on record.

9. Complainant Shyamlal (PW-2) has stated that his brother Bala Ram and son of Bala Ram with other person had caused damage of his house and he had complained about the incident before the Police Station Jaipur but no action has been taken, therefore he filed a complaint case before the Court, Shakti. Before the complaint, accused Laxman Singh, the present applicant, demanded Rs. 1,000/- to initiate the action on the report. He said that he could not give money collectively in one time then he was asked to deposit at least



Rs. 500/-. In his cross-examination he admitted in para 7 that:

“यह सही है कि थाना जैजैपुर द्वारा मेरे एवं बालाराम के खिलाफ 107—116 द. प्र.

सं. की कार्रवाई सकती में तहसीलदार के अदालत में की थी।”

11. In this case complainant is the sole witness of demand of money and complainant stated that appellant was not taking any action of his report. In this case prosecution did not produce any report of complainant.

12. Ramcharan Panda (PW-4) who is a retired Inspector has stated in his statement in paras 14 and 15 as under:

मैंने दिनांक 28.01.1986, जिसकी रिपोर्ट प्रार्थी द्वारा किया जाना बताया गया था, की जांच नहीं की। दिनांक 28.01.1986 की रिपोर्ट के संबंध में मैंने स्वयं किसी प्रकार की जांच नहीं की इस संबंध में की गई कार्यवाही के संबंध में प्रतिवेदन मंगवाया था। दिनांक 28.01.1986 की रिपोर्ट के संबंध में विशेष रूप से जानकारी लेने का कोई कारण नहीं है क्योंकि इस रिपोर्ट के संबंध में प्रार्थी ने मेरे पास शिकायत नहीं की थी। मैंने इस तारीख का रोजनामचा सान्हा भी नहीं बुलवाया था।

प्रार्थी एवं उसके भाई के विरुद्ध 107, 116 की कार्यवाही हुई हो तो मैं नहीं कह सकता हूं।

13. The defence of the appellant is that he filed proceedings under Section 106, 107 & 116 against the complainant and his brother and the complainant admitted this fact in para 7 of his statement.

14. In **C. K. Damodaran Nair v. Govt. of India** reported in **1997 (9) SCC 477** Hon'ble Supreme Court held in para 12 as under:

“12. The position will, however, be different so far as an offence under Section 5 (1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a



public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5 (1)(a) and (b) - and not under Section 5 (1)(c), (d) or (e) of the Act. 'Obtain' means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5 (1) (d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either 'acceptance' or 'obtainment'."

15. In **Pannalal Damodar Rathi Vs. State of Maharashtra** reported in **AIR 1979 Sc 1191** the Supreme Court observed as under:-

"8. there could be no doubt that the evidence of the complaint should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."

16. Again in **M.O. Shamsudhin Vs. State of Kerala** reported in **1995 (3) SCC 351** the Hon'ble Supreme Court observed as under:-

"12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices



but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling, and if to do public good approaches the authorities and lodges a complaint, then in order that the trap succeeds he has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a particeps criminis in respect of the crime committed and thus is an accomplice. Thus, there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of 'accomplices' by reason of their being bribe-giver, in the first instance, the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances."

17. Applying the aforesaid principles of law, the evidence on record is required to be closely examined to find out whether the prosecution has been able to prove demand of bribe beyond all reasonable doubt



but in this case complainant is the sole witness of demand of bribe and he stated that Police Station Jaijaipur has initiated the proceedings under Section 107, 116 of Cr.P.C. against him and his brother. The complainant has stated In para 4 of his statement as under:

“मैंने खीखराम को अभियुक्त के पास थाने पर भेजा। अभियुक्त थाने से मैं जहां था, वहां आया एवं पीछे-पीछे खीखराम आया। मैंने अभियुक्त को वहीं पास में जो एक साग सब्जी का टपरा था, वहां ले गया। मैंने अभियुक्त से कहा कि आपके कहे अनुसार पैसा लाया हूं, तो अभियुक्त बोला कि दे, तो मैंने मेरे जेब में कागज में रखे जो नोट थे, वे निकालकर अभियुक्त को दिये। उसे अभियुक्त ने अपने हाथ में लिया। तथा अपने पेंट की दांयी जेब में रख लिया। साहब लोग जो कि ताक में थे, अंदाज से लगभग 50, 60, 70 हाथ दूर थे तो मैंने सिर पर हाथ से खुजला कर इशारा किया, जो कि इशारा यह था कि पैसा दे दिया है, ऐसा साहब लोगों ने मुझे बताया था। तब साहब लोग आये और उन्होंने अभियुक्त को पकड़ा एवं संतराम की किराना दुकान पर ले गये।”

18. Panch witness D. R. Khute (PW-1) admitted in paras 13 & 14 of his cross-examination that:-

“यह सही है कि छपरी के अंदर क्या घटित हुआ अंधेरा होने के कारण मैं नहीं देख सका। हमने अभियुक्त को इशारा पाने पर छपरी में ही पकड़ा। हमारे परिचय देने के बाद अभियुक्त ने नोट गिरा दिये।

मैंने कितने नोट उठाया और आरक्षक ने कितने नोट उठाये मैं निश्चित रूप से नहीं बता सकता। जिस आरक्षक ने नोट उठाया था उसका हाथ नहीं धुलाया गया था।”

19. Defence witness Jugal Kishore (DW-1) stated in paras 1 & 2 of his statement that:

“जैजैपुर बस स्टैंड में मेरी पान की दुकान है। मेरी दुकान से लगकर छपरी बनी हुई है जिसमें दो आदमी बैठे थे। उन्होंने हाजिर अदालत अभियुक्त को



वहां से जाते देखकर आवाज देकर बुलाया। आवाज सुनकर हाजिर अदालत अभियुक्त उनके पास आये और पटरी में बैठ गये।

उसी समय मैंने देखा उसमें एक आदमी हाथ में क्या पकड़ा था हाजिर अदालत अभियुक्त की जेब में डालने लगा तो अभियुक्त बोला कि जबरन क्या डाल रहे हो और जेब से निकालकर फेंक दिया। आवाज सुनकर 2-3 व्यक्ति पहुंच गये और अभियुक्त को पकड़कर अलग एक जगह ले जाकर बैठा दिये और लिखापट्टी करने लगे।”

20. In this case prosecution has examined one Panch witness Dr. R. Khute who admitted in his statement that he did not see what happened in the shop due to darkness. He stated that complainant Syamlal was sitting in front of betel shop while Shyamlal (PW-2) stated that they are in front of vegetable shop. In this case there is material contradiction about the place. In **F.U. Siddique (Supra)** Hon'ble Supreme Court held in para 21 as under:-

“In the case in hand also, as per the prosecution story, bribe money was given to the Appellant, who was a Sub-Inspector of Police in uniform near a crowded betel shop situated near the police station. It is doubtful that a Sub-Inspector who was in prescribed uniform accepted the bribe money at the betel shop, i.e., a crowded place out of his office room that is to say leaving the safe place. In this case, there is a material contradiction about the place/pocket used for keeping of the bribe money by the Appellant, i.e., in the shirt or in the pant. There is other material contradiction regarding marking of the currency notes, i.e., either they were marked with letters “MAC” or with letter “C”. Admittedly, numbers of the currency notes which had been given to the Appellant as bribe were not noted before giving to the Appellant. Regarding demand of bribe money, it is admitted that recording of the conversation made between the Appellant



and the Complainant was not done. There is other material contradiction regarding the actual amount of bribe demanded by the Appellant.

In this case also the demand and acceptance of bribe is doubtful. Mere recovery of tainted notes from the possession of the appellant is not enough.

21. In the case in hand it is stated by the complainant that he send someone to call the appellant out of police station and trap party caught him near the betel shop. The defence of appellant is that he filed proceeding under Sections 107 & 116 against complainant and other person and one Ayodhya Prashad Sharma, (PW-3), has also submitted the same in his statement which is as under:-

“जरायम रजिस्टर में इस्तगासा क्र. 1686 और 1786 की प्रविष्टि है। इस्तगासा क्र. 1686 में पक्षकार बालाराम और मतराम, गोपीराम, दुकालु वगैरह कुल 15 व्यक्तियों के विरुद्ध प्रस्तुत किया गया था। इस्तगासा क्र. 1786 में पार्टी नं. 2 श्याम लाल, सुंदर वगैरह कुल 15 व्यक्तियों के विरुद्ध चला था। उपरोक्त दोनो इस्तगासा शान्ति भंग होने के आदेश पर प्रतिबंधात्मक कार्यवाही पक्षकारो के विरुद्ध पेश किया गया था।”

In his cross-examination he admitted that these entries were registered on 19.07.1986.

22. To constitute an offence under Section 161 IPC is it necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused. In this case demand of bribe money it is admitted that recording of the conversation made between the appellant and complainant was not done. The demand of bribe



money is highly doubtful but the defence of appellant is probable that he initiated proceedings against the complainant so he complained against the appellant. Panch witness has also not supported the acceptance of money.

23. From the above discussion demand and acceptance of bribe is doubtful. Mere recovery of tainted note from the possession of appellant is not enough. The whole prosecution story is doubtful therefore, the appellant deserves to be get benefit of doubt.

21. Consequently, the appeal is allowed. The impugned judgment of conviction and order of sentence is set-aside. Appellant is acquitted of the charges levelled against him. The appellant is on bail, his bail bonds is discharged and he need not to surrender. Fine amount, if deposited by the applicant, be refunded to him.

Sd/-
(Rajani Dubey)
JUDGE

V/-

