



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

CRIMINAL APPEAL No. 1533 of 1999

SHIVDARSHAN SHARMA NOW DECEASED THROUGH LRS

SMT. SURKSHA SHARMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Trilok Chand Jain- Advocate for the appellant.

Shri Raghvendra Singh Raghuvanshi- Advocate for the respondent.

.....
Reserved on : 25.07.2024

Pronounced on : 20.09.2024
.....

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

JUDGEMENT

- 1] Heard finally, with the consent of the parties.
- 2] Admittedly, the appellant has died and his legal representatives have been brought on record under proviso to Section 394 of Cr.P.C.
- 3] This criminal appeal has been filed by appellant Shivdarshan Sharma under Section 374 of Cr.P.C. against the judgement dated



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30.10.1999, passed in Special Case No.35 of 1993 by I Additional Sessions Judge, Indore (MP) whereby, the appellant has been convicted under Sections 7, 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act of 1988'), and sentenced to undergo rigorous imprisonment for 1 year with fine of Rs.1,000/-, with default stipulations.

4] In brief, the facts giving rise to the present appeal are that on 09.10.1991, the appellant, the then Food Inspector, Food and Safety Administration, M.Y., Indore demanded a sum of Rs.1,000/- from the complainant Anil Mishra, pertaining to the sample obtained by the Department from his *pan masala* factory on 22.06.1991. The said amount in bribe was demanded to remove the name of the complainant's wife Mridula from the array of accused persons in the complaint which was to be filed under Section 7/16 of the Food Adulteration Act, 1954 in the Court of Chief Judicial Magistrate, Indore, whereas, the Food and Safety Administration had sanctioned the permission to prosecute the wife of the complainant, Mrs. Mridula. Thus, while obtaining the said sum, the appellant was caught red handed in the evening of 09.10.1991.

5] The complainant Anil Mishra's case was that the demand was made in front of the driver Subhash, and since he did not want to pay him the bribe, a complaint was lodged by him on 09.10.1991, Ex.P/2 in the office of Special Police Establishment, Lokayukt, Indore, that the appellant is demanding Rs.1000/- from him as a bribe for the aforesaid reason. And, after completing the procedural formalities, by requiring the complainant to bring Rs.1,000/-, which he brought in the



form of ten notes of Rs.100/- denomination, and after applying the phenolphthalein powder on the same, and completing other procedural formalities, the complainant was sent to hand over the said amount to the appellant. When the complainant reached in the office of the appellant, he took him to the canteen of Dental College, where both of them had tea, and when the appellant demanded the money from the complainant, he handed over the same to him and signaled the trap party by moving his hand on his head. Thus, the appellant was caught on the spot and when his hands were washed in the Sodium Carbonate solution, the colour of the solution turned pink. The charge-sheet was filed and the learned Judge of the Trial Court, after recording the evidence, convicted the appellant as aforesaid, and being aggrieved, the present appeal has been preferred.

6] Shri T.C. Jain, learned counsel appearing for the appellant has submitted that a false case has been registered against the appellant, as the prosecution has not been able to prove its case beyond reasonable doubt. It is submitted that the learned Judge of the Trial Court lost sight of the fact that the criminal case against the wife of the complainant was to be filed in the Court of Chief Judicial Magistrate on 10.10.1991 itself, in respect of a sample which was obtained on 22.06.1991. Thus, it is submitted that there was no motive for the appellant to demand any amount from the complainant, because it was only on 09.10.1991, that the Health Department had sanctioned the prosecution to file complaint against the wife of the complainant under the provisions of Prevention of Food and Adulteration Act. It is also submitted that there is no voice recording available on record to



suggest that any amount was ever demanded by the appellant. Thus, it is submitted that mere recovery of the amount from the appellant would not suffice to convict him in the absence of any motive and demand.

7] Counsel for the appellant has also submitted that it was the complainant himself, who had kept the amount in the pocket of the appellant, which is also admitted by him in para 8 of his examination-in-chief, and in such circumstances, when the appellant was immediately caught by the trap party, he cannot be held responsible for the possession of the amount.

8] Counsel for the appellant has also submitted that the falsity of the case of the prosecution is also apparent from the fact that Ex.P/3 is the requisition sent by the Office of the Lokayukt to the Labour Commissioner for keeping the witnesses available in the morning of 09.10.1991, at around 10:30 a.m., which clearly means that the complaint Ex.P/2 was not filed on 09.10.1991, and it vitiates the entire case of the prosecution.

9] Counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that looking to the recovery of Rs.1,000/- from the possession of the appellant, the presumption under Section 20 of the Act of 1988 is available to the prosecution and thus, the burden of proof was on the appellant to clear himself of the aforesaid burden by leading cogent evidence, however, no such facts have been brought on record by the appellant to suggest that he was falsely implicated in the case.

10] Counsel has also submitted that even if the sanction to



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prosecute was granted by the authority one day prior to the filing of the complaint, it cannot be said that the appellant had no occasion to demand the amount.

11] Heard counsel for the parties and perused the record.

12] On perusal of the record, it is found that, it is true that the sanction to prosecute the wife of the complainant PW-3 Anil Mishra was granted one day prior to the filing of the complaint, but its benefit cannot be granted to the appellant, as according to the complainant, it was the appellant who had assured him that he would remove the name of his wife from the complaint. It is also found that the complainant has supported the case of the prosecution that he had lodged a complaint Ex.P/2 in the Office of Lokayukt, and had also brought Rs.1,000/- (ten notes of Rs.100/- denomination). It is also found that this witness PW-3 has stated that he had kept the amount in the pocket of the shirt of the appellant and after he was declared hostile in his cross-examination by the prosecution, he has feigned ignorance if the appellant had taken out the amount from his shirt's pocket and had kept it in his pants' pocket. Apparently, there is nothing on record to suggest that the appellant's shirt's pocket was also washed, which could have substantiated the story of the defence that the amount was kept by the complainant in the shirt's pocket of the appellant. Thus, despite the fact that he (the complainant Anil Mishra) has admitted that he was having a grudge against the appellant because a case was registered by the appellant against him, its benefit cannot be granted to the appellant.

13] PW-2, H.C. Mishra, the Labour Officer, who is an independent



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witness, has also supported the case of the prosecution, regarding seizure of the currency notes from the pocket of the appellant. Although, PW-4 Subhash Rao S/o Shankar Rao, who is a witness to the procedure adopted has not supported the case of the prosecution, however, PW-5, Phoolsingh Raghuvanshi, SDO, has supported the case of the prosecution, who is also a witness to the trap, and has admitted that from the pants' pocket of the appellant, the amount was recovered through Ex.P/8, and his pants pocket when washed with Sodium Carbonate Solution, also turned pink and the solution of his hands, which also got pink, is Ex.P/10.

14] So far as the contention of the appellant that the complainant's wife's prosecution was already sanctioned on 09.10.1991, and there was no occasion for him to demand any amount from the complainant in this regard, this Court finds that it is not relevant as the amount was paid on 09.10.1991 itself, as the complaint under the Food Adulteration Act was to be filed on 10.10.1991.

15] It is also found that in his accused statement under Section 313 of Cr.P.C., the appellant's defence is that he has been falsely implicated in the case only because he had taken sample from the appellant's premises, however, no evidence has been led by him as to how his hands and pocket of the pants has turned pink after washing the same from Sodium Carbonate.

16] So far as Section 20 of the Act of 1988, is concerned, which provides for the presumption against the public servant, provides that if it is proved that a public servant accused of an offence has accepted or obtained for himself or for any other person, any undue advantage



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from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained that undue advantage, as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly, either by himself, or by another public servant, and apparently, the appellant has not been able to rebut the aforesaid presumption, as he has not come out with any specific defence, except a suggestion made to the witnesses that the amount was kept by the complainant in his pocket, although, he has not even pleaded this fact in his defence under Section 313 of Cr.P.C.

17] So far as the discrepancy in Ex.P/3 is concerned, it is found that it has also been proved by PW-5, Phoolsingh Raghuvanshi, SDO, Lokayukt, Indore, who has stated that after recording the *Dehati Nalishi*, Ex.P/21, he had issued Ex.P/3 to the Labour Commissioner, but surprisingly, he has not been cross-examined in this regard by the defence in any manner. In such circumstances, when the appellant himself has not challenged the aforesaid document when he had the opportunity to cross examine the person who has issued the same, no importance can be attached to such discrepancy,

18] In view of the same, no case for interference is made out and the appeal being devoid of merits, is hereby *dismissed*.

(SUBODH ABHYANKAR)
JUDGE

Bahar