

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 15TH OF MARCH, 2023

Criminal Appeal No.387/1999

Between: -

Chandra Shekhar S/o Ramcharan Hardoniya,

Age: 50 years, Occupation: Service,

R/o Harsola, Tehsil Mhow, Indore, District Indore (MP)

.....APPELLANT

(By Shri Vijay P. Saraf, learned counsel)

AND

The State of Madhya Pradesh, Through

Special Police Establishment, Lok Ayukta,

Indore, District Indore (MP)

.....RESPONDENT

(By Shri Vaibhav Jain, learned counsel)

Reserved on: - 16.02.2023

Delivered on: - 15.03.2023

This CRIMINAL APPEAL coming on for hearing/judgment this day, **Hon'ble Shri Justice Vivek Rusia**, passed the following:

JUDGMENT

The appellant has filed this appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) being aggrieved by the judgment dated 26.02.1999 passed by the learned First Additional Sessions & Special Judge (under Prevention of Corruption Act, 1988) Indore, District Indore (MP) in Special Sessions Trial No.06/1997, whereby he has been

convicted for charges of corruption punishable under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) and sentenced to undergo one-year rigorous imprisonment and fine of Rs.500/- in each section along with default stipulation.

The prosecution story in nutshell is, as under: -

2. Complainant-Bondar S/o GhasiramMandloi (PW-2) made a written complaint on 21.08.1997 to the Superintendent of Police, Special Police Establishment, Lok Ayukta, Indore that he is the owner of agriculture land bearing Survey Nos.522 and 523, Patwari Halka No.35, Village Pedami, Post Kampel, Tehsil & District Indore (MP); and he is cultivating the said land since last so many years. In the said land, there is no Public Road, but Chandra Shekhar Hardoniya, Patwari has illegally built a road, which was earlier between Survey No.523 and 524. He met the Patwari to make a request for the opening of the road from Survey No.523 and 524 of Patwari Halka No.35, Village Pedami, Post Kampel, Tehsil & District Indore, for which he demanded a sum of Rs.1,000/- (rupees one thousand) as 'bribe' to be paid on 22.08.1997 between 10:30 AM to 11:00 AM in his residence i.e. Bank Colony, Indore. The complainant does not want to give a 'bribe' but wants to catch the Patwari red-handed, hence he made a complaint to Superintendent of Police Lokayukta.

3. The Superintendent of Police, SPE, Lokayukta, Indore handed over the complaint to Inspector, Shri Satyendra Kumar Shrivastava (PW-6) for an investigation into the matter. Shri Shrivastava registered a *Dehati Nalishi* Ex.P/27 on the basis of the complaint Ex.P/1. He directed the complainant to arrange currency notes of Rs.1,000/- (rupees one thousand) and to bring them at 07.30 AM on 22.08.1997. Shri Shrivastava (PW-6) called Panch Witnesses Jag Mohan Sharma S/o Shri Dhul Singh Sharma (PW-1) and Madan Gopal Tripathi

S/o Harish Chandra Tripathi and they were introduced to the complainant. Panch Witness Jag Mohan Sharma read out the contents of the complaint Ex.P/1 to Bondar, which he admitted. Thereafter, Bondar handed over ten notes of Rs.100/- (rupees one hundred) denomination, in total Rs.1,000/- (rupees one thousand) to PW-6. who recorded the numbers of currency notes and applied Phenolphthalein Powder in it to be given to the appellant by way of the trap. The complainant was explained the procedure for handing over the bribe to the appellant and thereafter giving a signal to the members of the trap team. Hewas specifically instructed not to shake a hand with the appellant before and after handing over tainted money. Thereafter, the entire Team with the complainant and his son and grandson reached the Bank Colony, Indore. The complainant Bondar Mandloi along with his son Mahesh and grandson Anoop Singh Songara (PW-4) entered the room of the appellant at 12:00 Noon. After 12:30 PM, complainant Bondar and his grandson came out and gave a signal to the Members of the Trap Team about handing over the bribe to the appellant. Thereafter, all the Members of the Team entered the room, gave their introduction to the appellant, and got washed his hands, which turned pink, and it was kept in a sealed cover. The tainted money was found in the open almirah in the room of the appellant.

4. After completing the necessary procedure and recovery of currency notes, further investigation was completed, and the charge sheet was filed. The Revenue Records pertaining to the land of the complainant were recovered, marked as Ex.P/24 to Ex.P/26. Service records and other relevant documents relating to the posting of the appellant were collected, which are marked as Ex.P/38 to Ex.P/40. The sanction for prosecution against the appellant was obtained from the Law Department, State of Madhya Pradesh, Bhopal vide

Ex.P/20, dated 06.09.1997. Thereafter, the charge sheet was filed. The charges were read over to the appellant, which he denied and pleaded for trial.

5. The appellant pleaded that complainant Bondar encroached upon the Public Road and purchased the land of a Bheel and included it in his land. He (appellant) conducted an enquiry, therefore, he (complainant) has falsely implicated him.

6. In order to prove the charges levelled against the appellant, the prosecution examined seven witnesses and exhibited forty documentary pieces of evidence marked as Ex.P/1 to Ex.P/41.

7. In defence, the appellant examined DW-1, Sher Jamal Khan S/o Jumma Khan, the owner of the land of Survey No.522/26.

8. After appreciating the entire evidence that came on record, vide judgment dated 26.02.1999 the learned Special Judge has convicted and sentenced the appellant, as stated above; and hence, this appeal before this Court.

9. Shri Vijay P. Saraf, learned counsel appearing of the appellant submits that the prosecution has utterly failed to prove 'the demand' as well as "acceptance of a bribe" by this appellant. The present appellant was posted as Patwari, at the relevant point in time; and he was not a Competent Authority under the provisions of Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as the Code) for closing as well as the opening of a road. No such application or the complainant was pending before the Tehsildar under Section 131 of the Code; therefore, there was no occasion or reason for the appellant to make a demand for opening a road or closing the road. It is further submitted by the learned counsel that the learned Sessions Judge in his judgment has accepted that the appellant had no authority to pass any order of closing as well

as the opening of a road. Therefore, the 'demand' has not proved has not been proved by the complainant.

10. It is further submitted by Shri Saraf learned counsel that there is no such voice recording of the petitioner to prove the conversation between the appellant and the complainant to establish the 'demand' for a bribe. Mere recovery of currency notes cannot *ipso facto* prove the acceptance of a 'demand' and/or "illegal gratification", as held by the Apex court in a catena of judgments.

11. It is further submitted that in the complainant there is an overwriting in respect of the year. By way of overwriting, the year '98' has been made as '97' in a complainant/letter dated 20.08.1997 [Ex.P/9]. The date is written in different ink. There is no such acknowledgement in Ex.P/9. Therefore, the aforesaid document has been created in order to falsely implicate the present appellant. Ex.P/9 is addressed to the present appellant, whereas he was not the Competent Authority to entertain an application for the opening of any road. All this important material of the case has not been considered by the learned Special Judge while convicting the appellant. Hence, his conviction is bad in law; and the appellant is liable to be acquitted of all the charges.

12. Shri V.P. Saraf, learned counsel for the appellant further submitted that no independent witness has been examined, though they were available on the spot. In para 16 of the trial Court discussed this issue. Panch witness Jag Mohan Sharma (PW-1), complainant Bondar (PW-2) and grandson of the complainant Anoop Singh Songara (PW-4) in their statement have categorically stated that the owner of the room (which was occupied by the appellant) was present at the spot. In support of his contentions, he has placed reliance on a judgment rendered by this Court in the case of **Satish Kumar Nema** v. **The State of**

Madhya Pradesh reported as **2008 (III) MPJR SN 5**, in which the conviction has been set aside due to non-examination of the independent witness.

13. On the point/issue of the validity of the sanction for prosecution, Shri Saraf argued that sanction has been granted vide Ex.P/20 on 06.12.1997 in the name and order of the Governor by the Additional Secretary, Department of Law & Legislative Affairs, Government of Madhya Pradesh, Bhopal, by stating that this appellant received the tainted money, first kept in his shirt pocket and thereafter, kept in the open Almirah; whereas, as per the prosecution story and the statement of the complainant Bondar (PW-2) and his grandson Anoop Singh Songana (PW-4), the tainted money was kept in the almirah by the appellant. Therefore, there is total non-application of mind while granting sanction for prosecution against the appellant. Hence, on this ground also, the appellant is entitled to acquittal.

14. Shri Saraf learned counsel has concluded his arguments by submitting the Section 161 statement of complainant PW-2 Bondar was recorded on 02.09.1997, i.e. after a period of one month from the date of handing over the investigation on 26.08.1997. There is no such provision for the recording of supplementary statements in the Code of Criminal Procedure, 1973 hence it makes the prosecution story doubtful. It is further submitted by the learned counsel that now the health condition of the appellant is very critical, hence he be not sent to jail at fag end of his life.

15. Shri Vaibhav Jain, learned counsel appearing for the prosecution / Special Police Establishment, Lok Ayukta, Indore has argued in support of the judgment of conviction by submitting that minor omissions and contradictions in the statement of the witnesses are liable to be ignored. The 'demand' as well as "the acceptance of bribe money", both, have been proved by the prosecution,

and after accepting the bribe, immediately the hands of the appellant were washed with chemicals, which turned pink and tainted money was also recovered from the house of the appellant for which he failed to give any explanation. Merely, non-examination of an independent witness will not be fatal for the entire prosecution with regard to the conviction of the appellant. The appellant was officially connected with the passageway in the land of the complainant as admitted by him. Hence the demand for a bribe by him is established. Hence criminal appeal be dismissed.

Appreciations & Conclusion

16. That the complainant (PW-2) Bondar gave a written complaint to the Superintendent of Police, Special Police Establishment, Lok Ayukta, Indore on 21.08.1997. As per the contents of the complaint, P.W.-2 is the owner of the agricultural land of Survey Numbers 522 and 523 in which there was no way for the public but the appellant, being the Patwari, has illegally created a road, whereas a road was there in between Survey Numbers 523 and 524. In the complaint, P.W.-2 did not mention the date on which, that road was opened by the appellant. He did not disclose the date on which he met with the appellant and requested him for opening a road between Survey Numbers 523 and 524. According to P.W.-2, the appellant directed him to give Rs.1,000/- (rupees one thousand) on 22.08.1998 but the date was corrected as 22.08.1997 with the addition of the timing from 10:30 AM to 11:00 AM. P.W.-2 did not disclose the date on which he met the appellant to prove the demand of the “illegal gratification”. P.W.-2 has also suppressed about the preparation of spot Panchama dated 17.10.1996 by the appellant which he signed as consenter.

17. To support the contents of the aforesaid allegations, the prosecution has got exhibited letter dated 20.08.1997 written by the complainant to the appellant

Patwari on 20.08.1997; but, there is no such acknowledgement by the appellant or any Clerk on it. As held by the learned Sessions Judge as well as under the provisions of the Code, the Patwari is not the Competent Authority to open as well close a road in any agricultural land. The prosecution has got exhibited Ex.P/17, a *Mouka Panchnama* dated 17.10.1996; according to which, on 17.10.1996, this appellant himself admitted a ten feet wide road and signed this *Mouka Panchnama*. It is recorded in this panchnama that complainant Bondar had closed the road on Survey Number 522/22 including Survey Number 522/25 and thereafter, he admitted to leave a ten feet road, by signing the *Mouka Panchnama*. During this *panchnama*, this appellant was present on the spot as Patwari. According to the complainant for the opening of this road, he met with the appellant and for which, he demanded Rs.1,000/- (rupees one thousand). A complaint was made to the Special Police Establishment, Lok Ayukya, Indore on 21.08.1997 i.e. after ten months when no case was pending the appellant or Tehsildar.

18. The Superintendent of Police and the Investigation Officer P.W.-6 believed such a vague complaint given by P.W.-2 a straight way organized the trap in less than 24 hrs. When P.W.-2 met with the appellant, the entire complaint is silent about it. According to him, he was called on 22.08.1997 with Rs.1,000/- (rupees one thousand). The contents of the complaint were verified only by reading its contents to the complainant. No such Voice Recorder was given before conducting a trap on 22.08.1997. In fact, the contents of the complaint with regard to the “demand of bribe” ought to have been verified by the Inspector by sending a shadow witness with the complainant with a Voice Recorder to record ‘the demand’, but the complaint was made on 21.08.1997 and within twenty four hours, the entire trip was

organized on 22.08.1997. hence the prosecution has failed to prove the demand of Rs.1000/- as a bribe by the appellant from P.W.-2.

19. The complainant had a grudge against this appellant because he was present during the *MoukaPanchnam* dated 17.10.1996, being a Revenue Officer and the road was opened from his land. Even otherwise, the complainant was not the owner of the land by virtue of a registered saledeed, only he has produced an unregistered and unstamped sale-agreement dated 17.12.1985 Ex.P/19, by which he is said to have purchased the land of Survey No.522/25 from Nana S/o Unya Bhil.

20. Apart from this, the statement of the complainant was recorded on 02.09.1997, which was insufficient to prosecute this appellant. Therefore, additional statements were recorded on 29.09.1997 in respect of correction of Survey Number. In his statement, he admits that he disclosed the wrong Survey Number in his statement recorded on 02.09.1997.

21. So far as non-examination of an independent witness is concerned, the complainant in his cross-examination has admitted that when he entered the house of the appellant, the appellant was sitting 2-3 feet away. Even at the time of handing over the bribe money, no voice recorder was given to the complainant for recording the conversation which makes the trap doubtful.

22. The complainant had a reason to implicate this appellant because when the road was provided from his land, this appellant was present on the spot, as per the *Mouka Panchnama*. The complainant has never challenged the said *panchnama* by filing an appropriate application under Section 133 of the Code or under other provisions under the Code if this appellant wrongly closed the earlier road and opened a way in his field/land. Even if the *Panchnama* was drawn and the road was closed, a Patwari has no authority to pass an order for

the opening of the road. Only higher Revenue Authorities can direct for closing and opening of the customary way.

23. According to the complainant, he along with grandson Anoop and Mahesh Patwari went to the house of this appellant, but he was not in the house and thereafter again he went and gave Rs.1,000/- (rupees one thousand) to him, which he kept in *Almirah*. After coming out, he gave an indication to the Members of the Trap Team. According to the Investigating Officer (IO) of the case, Satyendra Kumar Shrivastava (PW-6), he along with the Members of the Trap Team and complainant reached Bank Colony, Indore at 10:00 AM and sat in the Sai Baba Temple. They waited till 12:00 Noon because his scooter of Patwari was not there in front of the house. The complainant along with his son and grandson entered into the house of the appellant at 12:00 Noon and thereafter come out and gave an indication. Therefore, it is not clear from the evidence of the complainant and the IO, as to when the appellant entered/came in the house. According to complainant Bondar (PW-2), when he went to the house of the appellant, he (the appellant) was not there. According to PW-6, they believe that he was not inside, because his scooter was not there. When he (the appellant) came and entered in to his house, the entire prosecution story is silent and there is no evidence.

24. According to the prosecution case, the tainted money was recovered from *Almirah*. The complainant has not stated that he gave the money and the appellant kept it in the pocket and thereafter, put it in the *Almirah*, as per the contents of the sanction letter for prosecution against the appellant. Therefore, the benefit of the doubt goes in favour of the appellant, that he has been falsely implicated by the complainant because he had a grudge against him in respect of opening a way from his land. Instead of resorting to any legal remedy, or he

was aware that he could not get any relief legally, he made a complaint to the Superintendent of Police, Special Police Establishment, Lok Ayukta, Indore.

25. It is important to mention here that the complainant did not apply under the code for the opening of the road either before the appellant or before the competent authority, hence the appellant had no reason to make a demand from him. Therefore, the demand for a bribe by the appellant has not been established by the prosecution. The Apex court in the case of *Nishan Singh v. State of Punjab [Criminal Appeal No . 1227 OF 2005 decided on 16.11.2010]* has held as under

“The question that arises for our consideration is as to whether the appellant entered the details of the order granted by the Court on 2.7.1986 itself and if such an entry was made on 2.7.1986, was there any occasion by the appellant demanding the money from PW-5 on 18.7.1986. The High Court while adverting to this aspect of the matter clearly recorded a finding that from the perusal of the RapatRoznamcha "it does appear that entry with regard to stay was entered on 2.7.1986". The High Court having referred to that finding further proceeds to observe that the appellant making the entry on 2.7.1986 itself is of no consequence and he cannot be absolved with the charge framed against him. The reasoning given by the High Court is that in spite of making entry about the stay order in the Roznamcha the appellant required the PW-5 complainant to come after a week on the pretext that he was busy and will make the entry only after 2-3 days. It is on 18.7.1986, according to the High Court when the PW-5 returned to the appellant a demand of bribe was made. It is difficult to believe that PW-5 was not aware of the fact that such an entry was made by the appellant on 2.7.1986 itself. In fact there is a positive finding by the High Court that the entry was made on 2.7.1986 itself. In such view of the matter it becomes difficult to accept the story set up by the prosecution that a bribe was demanded by the appellant on 18.7.1986 and PW-5 complainant agreed to give that bribe. Once it is accepted that entry was made on 2.7.1986 itself, the whole story of the prosecution becomes unbelievable and unacceptable. For the

aforesaid reasons, we are of the opinion that the High Court has committed a grave error in upholding the finding of the Trial Court.”

26. In order to convict a public servant under Sections 7 and 20 of the Prevention of Corruption Act, mere recovery by itself cannot prove the charge against the accused. It has to be proved beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. In the case of ***B. Jayaraj V/s. State of Andhra Pradesh : (2014) 13 SCC 55***, the Apex Court has held that insofar as an offence under section 7 is concerned, it is a settled position of law that the demand of illegal gratification is a *sine a qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. This judgment has recently been followed by the Apex Court in the case of **N. Vijayakumar v. State of Tamil Nadu** (Cr. Appeal Nos. 100-101 of 2021 decided on **03.02.2021**) also reported in [**2021 SCC Online SC 53**]. Para 12 of the said judgment is reproduced below :

“12. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779 and in the case of B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1) (d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal

gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court. The relevant paragraphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under :

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences

under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.” The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is “possible view” as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”

27. Accordingly, this appeal is **allowed** and the judgment dated 26.02.1999 passed by the learned First Additional Sessions & Special Judge (under Prevention of Corruption Act, 1988) Indore, District Indore (MP) in Special Sessions Trial No.06/1997, is hereby **set aside**, resultantly the appellant is discharged from charges of corruption punishable under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Act. The bail bonds stand discharged. Record for the trial court be sent back.

(Vivek Rusia)
Judge