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**Narayan Gir Vs. the State of M.P.**

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**SooperKanoon Citation** : sooperkanoon.com/506769

**Court** : Madhya Pradesh

**Decided On :** Apr-26-2008

**Reported in** : 2008(4)MPHT189

**Judge** : A.K. Shrivastava, J.

**Appellant** : Narayan Gir

**Respondent** : The State of M.P.

**Advocate for Pet/Ap.** : Shri. Rajneesh Naveria

**Disposition** : Appeal allowed

**Judgement** :

**A.K. Shrivastava, J.**

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 30-4-1996 passed by learned Special Judge, Sehore in Special Case No. 1/ 95 convicting the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short 'the Act') and sentencing him to suffer R.I. of one year and fine Rs. 1000/-, in default, further imprisonment of three months under Section 7 and R.I. for two years and fine Rs. 1000/-, in default, further imprisonment of three months under Section 13(2) of the Act with the stipulation that both the sentences shall run concurrently, the appellant has preferred this

appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. In brief the case of prosecution is that a complaint dated 24-3-1994 was submitted by complainant Banshilal who is an agriculturist of village Uljhawan district Sehore in which it has been stated that appellant is serving on the post of Lineman and despite complainant had installed the electric meter to set the thrasher machine in motion by electric power even then appellant is demanding Rs. 1000/- from him and he has given threat that he will not permit complainant to operate the thrasher machine and has also given threat that a false case will be cooked against the complainant in which complainant would be required to incur Rs. 4000/-.

3. This complaint Exh. P-6 was submitted by the complainant to Superintendent of Police District Sehore who gave necessary instructions to SIX) (P) to arrange a trap. Thereafter on the request of SDO (P) N.K. Tiwari, Collector Sehore deputed two Government employees to include them in the trap party. Accordingly Shri M.D. Agrawal, DSO and one Shri Pandya, Dy. Director, Agriculture were made members of the trap party. Thereafter, SDO (P) along with complainant and witnesses came to police station Sehore where the witnesses were introduced to the complainant. Three currency notes of Rs. 100/- each were given to the complainant and a pre-trap 'Panchanama' was prepared in which the number of the currency notes were noted down. Thereafter trap party along with complainant proceeded to the village of complainant. At the outskirt of the village, the complainant was dropped from the jeep. Complainant told SDO (P) that appellant used to come to the shop of Devilal barber. Complainant was instructed that after giving the money of bribe to the appellant, he would rub his hands on his head which will be a signal to the trap party that appellant has taken the bribe. The SDO (P) and other members of the trap party hide themselves and on receiving the signal from the complainant, they caught the appellant and seized the currency notes from him. The numbers of the currency notes were tallied from the pre-trap Panchanama and they were found the same.

4. After the investigation was over, a charge sheet was submitted before the Special Judge who framed charges punishable under Sections 7 and 13(2) of the

Act against the appellant, which he denied and requested for the trial.

5. In order to bring home the charges, the prosecution examined as many as 7 witnesses and placed Exhs. P-1 to P-12 the documents on record. The defence of appellant is of false implication and the same defence he set forth in his statement recorded under Section 313, Cr.PC.

6. The learned Special Judge on the basis of the evidence placed on record came to hold that the charges are proved against the appellant and eventually convicted the appellant and sentenced him as mentioned hereinabove.

7. In this manner the present appeal has been filed by the appellant assailing the judgment of conviction and order of sentence.

8. I have heard Shri Rajneesh Naveria, learned Counsel for appellant and Shri T.K. Modh, learned Dy. Advocate General for the State. Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed and appellant is entitled for acquittal.

In the present case, the foundation stone of the case is complaint (Exh. P-6) lodged by complainant Banshilal (P.W. 4). On going through the complaint, it is gathered that complainant had installed a meter in order to operate the thrasher machine eight days earlier to the filing of complaint (complaint was filed 24-3-1994). Further it is also mentioned in the complaint that Lineman is one 'Gusai Maharaj' and despite the meter has been installed, Lineman Gusai Maharaj is making demand of Rs. 1000/- and is saying that till the amount of Rs. 1000/- is not paid, he will not permit complainant to operate the thrasher machine and will harass the complainant and will also lodge a false case in which complainant would be required to incur Rs. 4000/-. In the complaint specific name of Lineman 'Gusai Maharaj' is mentioned who is harassing the complainant and is demanding the bribe. Nowhere from the evidence of complainant Banshilal, when he appeared in the Court as P.W. 4, it is gathered that the present appellant Narayan Gir is the same 'Gusai Maharaj' or said Gusai Maharaj is some other Lineman. This is very material because it has come in Para 13 of the testimony of complainant Banshilal (P.W. 4) that the amount of bribe was required to be given

to some other Linemen, but, on seeing the appellant, the money was entrusted to him.

9. In Para 9 of his testimony, complainant has admitted that he did not write the complaint (Exh. P-6) but the same was written by some other person and he did not remember the name of scribe. Further he has admitted that to whom the amount of bribe was to be given out of three Linemen, this was not settled and the officers instructed complainant whichever Lineman reaches first the amount of bribe be given to that person. In the complaint Exh. P-6 the complainant made complaint in respect to the demand of bribe only against a singular person namely 'Gusai Maharaj' and there is no complaint that three Linemen including the appellant, were making the demand of bribe. Except Lineman some 'Gusai Maharaj', names of other Lineman arc not mentioned in the complaint. Thus it is not only difficult but it would be highly unsafe to convict the appellant on such type of shaky and totally unreliable evidence.

10. Apart from what I have held hereinabove, on proper scrutiny of the testimony of complainant Banshilal (P.W. 4) particularly Paras 4 and 5, nowhere it is gathered that appellant ever made any demand of bribe and accepted the same. To me, it is quite necessary to prove these 2 essentials ingredients in order to hold the charges under Sections 7 and 13(2) of the Act to be proved. The Supreme Court in the case of Smt. Meena Balwant Hemke v. State of Maharashtra : 2000 CriLJ2273 , has held that the law has always favoured the presence and importance of shadow witness in the trap party not only to facilitate such witness to see but also overhear what happens and how it happens. Hence, what transpired between appellant and complainant before the money was received by the accused/appellant is essentially required to be brought on record. From the testimony of complainant, it is not proved that appellant is the same Gusai Maharaj who has been made accused by the complainant in his complaint (Exh. P-6) not it is proved that appellant ever made demand of bribe and accepted the same from complainant. True, there is presumption of acceptance of bribe under Section 20 of the Act, if there is recovery from the accused, but, before such presumption can be drawn, the prosecution is obliged to prove the burden of making demand of bribe and acceptance of the same by the accused. To me, the statutory

presumption would come into play only when the initial burden of making demand of bribe and acceptance of it is proved by the prosecution.

11. The Supreme Court in the case of T. Subramanian v. State of T.N. (2006) 1 SCC 401 has laid down the law that in the trap case mere recovery of money would not be sufficient to hold that accused made demand of bribe and accepted the same, if the mitigating circumstances and the evidence do not warrant that the bribe was ever demanded and accepted by the accused. In the present case there is no corroboration of the evidence of complainant whose status is not better than that of a accomplice, because no witness of the trap party accompanied the complainant to overhear what transpired between them. Hence, it is in the air that what type of conversation took place between the complainant and the appellant when the currency notes were given to him. I have already held hereinabove while marshalling the evidence of complainant that nowhere it is proved that appellant ever made any demand of bribe from the complainant.

12. I may further add that, there are discrepancies and material contradictions in the testimony of complainant about the amount of bribe. In the complaint it is said that amount of Rs. 1000/- has been demanded, but, specifically this fact has been denied by the complainant when he appeared in the Court as P.W. 4. In Para 11 he has specifically stated that appellant never made demand of Rs. 1000/- from him. On going through the complaint (Exh. P-6), nowhere it is gathered that appellant has taken out the cable and starter of the thrasher machine and carried these articles with him by saying that if the bribe is given to him then only both these articles will be returned to the complainant in order to start the thrasher. While in the testimony the stand of complainant is that appellant took out the starter and the wire of the thrasher machine and was insisting to give bribe. For this additional reason also the evidence of complainant is not reliable.

13. From the evidence of the complainant the demand and acceptance of bribe is not at all proved and the evidence of complainant is not corroborated by any shadow witness. The Supreme Court in the case of Smt. Meena Balwant Hemke (supra) in para 9 on page 2238 has categorically held as under:

The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case.

Because, the evidence of complainant in the trap party is that of accomplice the rule of prudence is that his testimony should be corroborated by independent witness. In the present case, the evidence of complainant is not at all corroborated.

14. For the reasons stated hereinabove, I am of the view that the charges under Sections 7 and 13(2) of the Act are not proved against the appellant. Eventually, this appeal succeeds and is hereby allowed. The judgment of conviction and order of sentence is hereby set aside and the appellant is acquitted from all the charges. The amount of fine, if deposited, be refunded to him. The appellant is on bail, his bail bonds are discharged.

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