

Subhash Kumar Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Apr-29-2005

Reported in : 2005(2)BLJR1522

Judge : R.K. Merathia, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1) and 13(2)

Appeal No. : Cr. Appeal No. 179 of 2002

Appellant : Subhash Kumar Singh

Respondent : State of Jharkhand

Advocate for Def. : A.K. Kashyap and; A.R. Choudhary, Advs.

Advocate for Pet/Ap. : Rana Pratap Singh, Sr. Adv.,; Janardan Prasad Singh and;

Judgement :

R.K. Merathia, J.

1. This appeal is directed against the judgment dated 27.4.2002 passed by learned VIIIth Additional Judicial Commissioner cum Special Judge (Vigilance), Ranchi, convicting the appellant under Sections 7/13(1)(d) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#) and sentencing him to undergo rigorous

imprisonment for two years each under Section 7/13(1)(d) read with Section 13(2) of the said Act. The sentence was ordered to run concurrently.

2. Appellant was posted as Assistant Engineer in the Electricity Board, Ranchi at the relevant time. Ram Prakash Rai-Complainant (PW 8), lodged a written complaint to the Superintendent of Police (Vigilance) on 22.12.1988 alleging as follows :-

That he was an educated unemployed person and he decided to start a work of steel fabrication cum printing press at Jagdeo Nagar, Ranchi and for this, he enquired from 'Bara Babu' of the Electricity Board-S.N.P. Singh, who told him that he will have to incur expenses of about Rs. 12,000/- which includes Rs. 6,000/- as the official expenses. After great persuasion Rs. 5,000/- was fixed as bribe. S.N.P. Singh took him to the appellant when he was told to make application etc. The appellant also told him that the official expenses will be Rs. 6,000/- and he will have to pay Rs. 5,000/- as a bribe for getting electrical connection easily. He being poor and unemployed person was unable to pay the bribe and he wanted that the appellant, who asked for bribe, should be caught red handed.

3. The said complaint was forwarded by the Superintendent of Police (Vigilance) to the Assistant Sub Inspector of Police (A.S.I.)-Garbet Hembrom (PW 6) to enquire and report immediately.

PW 6 enquired into the matter and submitted an enquiry report dated 23.12.1988 (Ext. 2) to the Superintendent of Police (Vigilance) stating inter alia as follows :-

He went to the office of the appellant at 1.25 p.m. along with the complainant. The appellant was not in the office. On enquiry, he was told that the appellant will be available at about 3-3.30 p.m. Again at 3.30 p.m., they went. Complainant went in the chamber of the appellant. PW 6 started hearing their conversation standing near the open gate at some distance. The complainant asked about the Bara Babu-S.N.P. Singh/Appellant told that he is not available. Appellant asked the complainant to tell about his work. The complainant gave the requisition form for electric connection to the appellant. The appellant endorsed to the cashier for registering the same on taking Rs. 10/- and told the complainant to get the receipt

on the following day in the first half as the cashier was not available at that time. Then the complainant said that he is not in a position to pay Rs. 12,000/- which was estimated for giving electrical connection. The appellant asked him to pay Rs. 6,000/- to him. and to take receipt of the balance amount of official expenses of Rs. 6,000/-. The complainant requested the appellant to reduce the amount of Rs. 6,000/-. Then the appellant asked to pay Rs. 5,000/-. The complainant requested to reduce the amount further. The appellant said that some Government expenses can be reduced but the complainant should pay him Rs. 5,000/- as early as possible. The complainant asked for some time to arrange the money. The appellant asked him to come on Tuesday/Wednesday in the next week. The complainant said that he will pay Rs. 3,000/- or Rs. 4,000/- on that day and the balance Rs. 1,000/- will be paid later on. The appellant agreed to this. On 23.12.1988, when the complainant and PW 6 went to the cashier for registration of the application, the cashier issued receipt of the previous date i.e. 22.12.1988. Therefore, from the conversation, it was clear that the appellant was demanding Rs. 5,000/- illegally. The appellant is going to accept Rs. 3,000/- or Rs. 4,000/- from the complainant on 27/28.12.1988.

4. On 27.12.1988, the complainant lodged another complaint with the Superintendent of Police (Vigilance) stating inter alia as follows :-

On 22.12.1988 he gave an application for electricity supply to the appellant. The appellant asked for Rs. 5,000/- as bribe. After several requests, ' 27/28.12.1988 was fixed for payment of Rs. 3,000/- or Rs. 4,000/-. On 22/23.12.1988, Shri Garbet Hembrom, Assistant Sub Inspector of Police (PW 6) also accompanied him for verification of his complaint. As the complainant could not arrange the said big amount he requested the appellant that he could arrange only Rs. 1,000/- and he will pay the balance amount and in the meantime his work may be started. The appellant asked him whether he has brought Rs. 1,000/-. He said that he has not brought but he has arranged the same. The appellant then told him to give the said amount to him in the office in course of the day, whereupon the complainant came back and was giving this information to the Superintendent of Police (Vigilance). On 27.12.1988 at 11 a.m., a team was constituted for trapping the appellant.

5. Learned counsel for the appellant submitted that the prosecution could not prove the recovery of money from the appellant, beyond all reasonable doubts. He submitted that both the seizure list witnesses namely PW 1 Masrur Parvez and PW 3 Mastan Singh have not supported the prosecution case about recovery of tainted money from the almirah and they have been declared hostile. He also submitted that the complainant-Ram Prakash Rai (PW 8) said in paragraph 14 of his evidence that on 29.12.1988, he put the tainted money on the table, whereas PW 6 has said in para 9 that the tainted money was found kept in the almirah.

6. In reply to this, learned counsel for the Vigilance submitted that the seizure list witness PW 1 clearly stated that number of G.C. notes were compared with the memorandum of G.C. Notes, and thereafter he signed on the memorandum, though in paragraph 6 he said that he himself did not compare the numbers. He further submitted that PW 3 also said that he did not sign the memorandum after comparing the numbers but in paragraph 10 he said that he tallied two notes only from the memorandum. PW 10 (Magistrate) has said in paragraph 25 that PWs 1 and 3 signed the memorandum of G.C. notes after going through the memorandum. PW 11 in paragraph 10 has also said that PWs 1 and 3 signed the memorandum of G.C. notes after going through the same. He further submitted that the seizure list witnesses, PWs 1 and 3 were called from the public after the tainted money was recovered from the almirah, after getting the keys from the appellant immediately after the tainted money was accepted by the appellant. This is fully supported by PWs 5, 6, 7 and 12 and also by PW 10, the Magistrate, and PW 11, the Investigating Officer. He relied on Judgments reported in 1974 SCC (Cri) 406 Gian Singh v. State of Punjab, 1998 SCC (Cri) 456; State of U.P. v. Zakaullah and submitted that the trap witnesses cannot be discredited merely because they were police officials. He therefore submitted that the demand, acceptance and recovery, all have been fully proved. Referring to Section 20 of the Prevention of Corruption Act, he submitted that appellant was caught red handed with tainted money and therefore there is no escape from the presumption that he accepted illegal gratification, which he failed to disprove. Learned counsel for the Vigilance relied on the judgments reported in 2001 (1) East Cr C 300 (SC) M. Narsinga Rao v. State of A.P. and 1991 Supp (1) SCC 206 Rup Singh v. State of Punjab. He pointed out to para 9 of evidence of PW 6 and para 7 of the

evidence of the complainant PW 8 and submitted that it is clear that after the appellant accepted the envelope containing the tainted money the complainant came out of his office and said to PW 6 that appellant has accepted money and on signal the appellant was trapped. PW 11 has stated that as soon as the raiding party entered into the chambers of the appellant the drawers were searched and then appellant was asked about the keys of the almirah which he took out from his pocket. The keys of the almirah are material Exhibit in this case. Thus tainted money was recovered from the almirah. In paragraph 10-PW 11 has given a graphic detail of the occurrence.

7. I find force in the submission of learned counsel for the Vigilance. There is no contradiction in the evidences. PW 8 has said that soon after the tainted money was kept on the table, he gave signal to the raiding party, and went back. There is no reason to disbelieve the other prosecution witnesses on the point of recovery of tainted money from the alimrah. After accepting the bribe, the appellant could not have left the money on the table openly. PW 10 Maheswar Prasad Mishra, who was Special Magistrate in the Vigilance Department, is also one of the witnesses to the recovery and seizure of the tainted money from the almirah.

8. Learned counsel for the appellant, with reference to paragraph 6 of the case reported in : 1974 CriLJ307 , submitted that in trap cases raiding parties are only interested in success of the raid.

9. I am not convinced with this argument also. The said observation was made in a different situation. The question before this Court is whether the prosecution has proved it's case beyond all reasonable doubts.

10. Learned counsel for the appellant then submitted that S.N.P. Singh (Bara Babu) has neither been made accused nor a witness inasmuch as it was he who first negotiated about the amount of bribe amount with the complainant he filled the requisition form with incorrect description of the premises for which electrical connection was sought; though allegedly he was on leave during the relevant period i.e. from 22.12.1938 to 29.12.1988 but he was found in the office on 23.12.1988 and 29.12.1988.

Learned counsel for the Vigilance relying on the observations made in paragraphs 8 and 11 of the judgment of the Supreme Court reported in : 2005 CriLJ1411 V. Radhakrishna Reddy v. State of A.P. rightly submitted that no much importance can be given to the aforesaid circumstances and they are wholly immaterial for judging the guilt of the appellant.

11. On consideration of the aforesaid materials on record, and the submissions of learned counsel, I find that prosecution has proved beyond all reasonable doubts that the appellant demanded and accepted illegal gratification from the complainant. The tainted money was recovered from the almirah immediately after the same was accepted by the appellant. The hands of the appellant were washed in the chemical solution, which turned pink. The solution was sent to the chemical analyst and his report is also on the record.

12. Accordingly, I do not find any merit in the appeal. The conviction of the appellant is confirmed.

On the question of sentence, it was submitted that S.N.P. Singh also negotiated about the bribe; that the appellant has suffered this case for about sixteen years; that his service will also suffer on account of this conviction; and that he has remained in jail for about ten days.

In the circumstances, I am inclined to modify the sentence. In lieu of the sentence of two years R1 if the appellant pays a fine of Rs. 25,000/- within one month from today, he will be discharged from his bail bounds. Otherwise, his bail bonds will be cancelled and he will be taken into custody to serve out the sentence.

13. With these modifications in the sentence, this appeal is dismissed.