

Niranjan Bharati Vs. State of Orissa

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Court : Orissa

Decided On : Aug-29-2003

Reported in : 2003(II)OLR399

Judge : L. Mohapatra, J.

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

Appeal No. : Criminal Appeal No. 142 of 2001

Appellant : Niranjan Bharati

Respondent : State of Orissa

Advocate for Def. : D.K. Mohapatra, Standing Counsel (Vigilance)

Advocate for Pet/Ap. : B.B. Biswal, ;D.K. Biswal, ;M.R. Panda, ;B.R. Biswal and ;S.K. Panda

Disposition : Appeal allowed

Judgement :

L. Mohapatra, J.

1. This appeal is directed against the judgment and order of conviction passed by the learned Special Judge (Vigilance), Sambalpur in T.R. Case No. 5 of 1999 convicting the appellant under Sections 13(2) and 7 of the [Prevention of](#)

[Corruption Act, 1988](#). The appellant has been sentenced to undergo R.I. for one year and has also been directed to pay Rs. 1000/-, in default to undergo R.I. for a period of ' three months.

2. Case of the prosecution is that one Kailash Chandra Dehury (P.W.3) was working as Peon in the office of the S.D.O., National Highway Sub-Division, Angul. He had applied for sanction of loan from G.P.F. account and also had submitted an application for some advances to meet the medical expenses of his wife. He had also applied for leave salary due to him. The above applications were sent to the office of the Executive Engineer, National Highway Division, Ohenkanal where the appellant was working as Dealing Assistant and was required to process the applications for sanction of leave as well as G.P.F. loan. It is alleged that P.W.3 (complainant) approached the appellant for early sanction of G.P.F. as well as leave salary but the papers were not put up before the authority for obtaining sanction order. On the other hand, it is alleged that the appellant demanded rupees two hundred to do the above work. Thereafter, the complainant reported the matter to the vigilance police vide Ext. 12 and a case was registered following the formalities and it was decided to lay a trap. On 10.9.1998 trap was laid and the appellant was caught while accepting bribe of rupees two hundred and the said amount was recovered from the possession of the appellant. After completion of investigation, charge-sheet was submitted for commission of the aforesaid offences and the appellant faced trial. Plea of the appellant is that he had never demanded bribe from the complainant and by the alleged date of trap sanction of G.P.F. and leave salary had already been made. Further plea of the appellant is that since there was no matter pending before him as Dealing Assistant, there was no occasion for him also to demand the alleged bribe. On the contrary, the complainant had borrowed rupees two hundred from the appellant which he returned to him on the date trap was of laid and the same was treated as bribe.

3. In order to bring home the charges the prosecution examined four witnesses. P.W.3 is the complainant who lodged report before the Vigilance police. P.W.1 accompanied P.W.3 to witness the transaction and payment and hearing the version. P.W.2 is a gazetted officer who was present at the time of preparation and detection as well as recovery of bribe amount from the possession of the appellant

and P.W.4 is the I.O. On behalf of the defence, two witnesses were examined. Learned Special Judge (Vigilance) accepting the evidence led from the side of the prosecution convicted the appellant for the offences as aforesaid.

4. In this appeal, learned counsel for the appellant challenged the findings of the learned Special Judge (Vigilance) on the following grounds :

(i) There was no work pending with the appellant on the date trap was laid and therefore there was no occasion for the appellant to demand any payment for doing such work.

(ii) There is no evidence to show that there was any prior demand or that any demand was made on the date trap was laid.

(iii) No independent witness has been examined by the prosecution to prove the demand of bribe as alleged.

(iv) Evidence of the complainant is not corroborated by any other witness.

Mr. D. K. Mohapatra, learned Standing Counsel for the Vigilance Department, on the other hand, submitted that in a trap case except the complainant and the decoy witness there cannot be any other independent witness to be examined on behalf of the prosecution. The complainant and the decoy witnesses having corroborated each other in material particulars, there is no reason to disbelieve them. It was also contended on behalf of the Department that there is evidence on record to show that prior to the work was done there was demand of bribe and the same might have been paid after the work was over.

5. In order to appreciate submissions of the learned counsel appearing for both parties, I feel it necessary to look into the complaint as well as evidence led before the Court by the prosecution. In the complaint lodged before the S.P.(Vigilance), Sambalpur it is alleged that the complainant on 26.7.98 submitted an application for withdrawing rupees ten thousand from G.P.F. account and papers were brought by hand to the Accounts Section and had been handed over the appellant. It is also alleged that the complainant requested the-appellant personally to process the file for withdrawal of the amount as stated above from his G.P.F.

account as well as leave salary for the leave due, but for the said work the appellant demanded rupees two hundred as bribe. Since the complainant refused to oblige, the application for withdrawal of amount from his G.P.F. account was returned with objection and the same was again forwarded through the S.D.O. to the appellant. But the appellant again demanded bribe of rupees two hundred. Thereafter the complainant agreed to pay amount on 10.9.98. The complainant has been examined as P.W.3. In his evidence before the Court he has corroborated the allegations made in the complaint and has further stated that on 10.9.98 he was taken by the Vigilance Police to P.W.D. Inspection Bungalow of Dhenkanal where other Vigilance officers and some officers of the Horticulture Department were present. There he disclosed before them regarding demand of money by the appellant and produced two hundred rupee notes. The notes were sprinkled with some white colour powder and the same were kept in his pocket with instruction to give the same to the appellant. The numbers of two notes were noted in a piece of paper. Thereafter, the complainant went to the Division Office of the National Highway and found the appellant in the office. When the appellant asked for money, the complainant handed over the rupees two hundred to him and the appellant kept the money in his table drawer and came out of the room, whereafter P.W.2 and other officers caught-hold of the hands of the appellant and hand wash was taken and the liquid colour turned to red. In cross-examination, this witness has stated that he had applied for sanction of leave salary and G.P.F. loan. He filed application on 22.7.98 and the same was forwarded by the S.D.O. addressed to the Executive Engineer, Dhenkanal Division. On 20.8,1998 he met the Executive Engineer and the appellant who was working as Dealing Assistant. Loan application form was defective and the same was returned with direction to come with rectified loan application for sanction of loan and leave salary. This witness could not give the date he met the appellant but stated that he met the appellant on three occasions. He also stated in cross-examination that on 4.9.98 the Divisional Accountant prepared G.P.F. loan bill but he could not say when the sanction was accorded. This witness has further admitted in cross-examination that he had got his leave salary before the date of trap. This witness has also admitted that on the date trap was laid G.P.F. bill was in treasury. This witness has also admitted in cross- examination that he did not mention in the report to

Vigilance Police and in his statement to the Investigating Officer on which date such demand was made by the appellant. P.W.2 is the witness accompanied the prosecution party before laying trap. In his evidence before the Court this witness has stated that on the date the trap was laid, they were in a jeep at about 10.40 A.M. to the N.H. Division Office. The complainant and p.w.1 went to the office of the N.H. Division Office and this witness took position at a distance from the said office. After waiting for about 5 to 10 minutes he received signal from the accompanying witness (p.w. 1) and immediately thereafter he and others rushed to the office of the appellant. The D.S.P. asked this witness to go to the appellant and thereafter this witness went to the appellant and opened the drawer of the table where rupees two hundred were found. The appellant was thereafter called to the side room where his hand wash was taken and the colour of the solution changed to pink. However, this witness turned hostile. P.W.1 is the witness who accompanied the complainant (p.w.3). On the relevant date he was working as Senior Clerk in the office of the Deputy Director of Agriculture, Dhenkanal. In his evidence before Court this witness has stated that he was instructed by the Vigilance Department to accompany the complainant to the N.H. Division Office, he over heard conversation between appellant and P.W.3 and also saw handing over the bribe money and acceptance of the same by the appellant and thereafter relayed signal to the raiding party waiting outside. This witness has further stated that after reaching N.H. Division Office the complainant (p.w.3) entered into the office and he stayed at a distance at about 5 to 7 feet. The complainant after reaching the place where the appellant was sitting asked him if he had processed the G.P.F. matter and the appellant asked the complainant to give money and thereafter the complainant handed over rupees two hundred notes and the appellant kept the money in his hand and thereafter in the drawer of his table. After this, this witness signalled the raiding party waiting outside who came to the spot, caught hold of hands of the appellant and hand wash of the appellant was taken. The solution changed to pink. In cross-examination, nothing has been brought out to disbelieve this witness.

From the evidence of three witnesses as well as the I.O., it is clear that on the date trap was laid the complainant handed over rupees two hundred to the appellant which was received by him and thereafter he kept the same in the drawer of the

table. After getting signal from P.W. 1 the raiding party reached the spot and caught-hold of hands of the appellant and hand wash of the appellant was taken which turned to pink. Question that arises for consideration is whether rupees two hundred received by the appellant from the complainant was bribe money he had demanded as alleged, or such amount was paid back by the complainant to the appellant, which according to the appellant, had been taken by the complainant as loan from him. There is no dispute that on 26.7.98 as is evident from the complaint, the complainant had gone to the office where the appellant was working and requested him to process the file for grant of loan from G.P.F. account as well as leave salary. It is alleged that on that date the appellant demanded rupees two hundred towards bribe. It also appears from the complaint that the complainant refused to pay money. G.P.F. application was returned with objection whereafter it was again forwarded through the S.D.O. Thereafter, there is no mention of any date on which the complainant met the appellant and the appellant demanded payment of bribe. In evidence also the complainant has clearly admitted that he has not mentioned dates on which he met the appellant and the appellant demanded payment of bribe. From the evidence also it appears that G.P.F. form in which application was submitted by the complainant was defective and for that reason only the same was returned back. Therefore, it is cleared that the G.P.F. form which was sent back with objection was not for non-payment of bribe amount as alleged, but because of the fact that the form was defective and therefore the demand as alleged on 26.7.98 has no consequence. In view of such evidence on record, it is clear that after the loan application form for withdrawal of G.P.F. amount: was re-submitted for sanction, there is no date mentioned either in the complaint or in the evidence of the complainant on which the appellant demanded payment of bribe money of rupees two hundred. Moreover, from the evidence of P.W.3 it is clear that by the time trap was laid the application for loan from G.P.F. account had already been sent to the treasury and leave salary had already been paid to the complainant. Therefore, on the date trap was laid,- there was no work of the complainant pending with the appellant. In this connection, reliance was placed by the learned counsel for the appellant on a decision of the Rajasthan High Court, in the case of Kanhaiyalal v. State of Rajasthan reported in 1998 CR1. L.J. 3155. In the aforesaid decision as it appears it was proved through

prosecution witnesses that there was no work of the complainant: pending with the accused- appellant, First prosecution' tried to show that the appellant demanded money on 16.3.1978 in order to sanction subsidy to be granted to deepen the well but the demand was not proved. Then it is said that bribe was demanded by Sri Vaishnav but there was no work pending with Sri Vaishnav or in the office of Project Officer. The prosecution came forward with the version that the amount was given to the appellant to pass over to the .Assistant Engineer but there was no work pending with the Assistant Engineer. In the circumstances, the Rajasthan High Court held that since there was no work pending with the appellant, no bribe could have been given to him.

So far as the present case is concerned, as it appears from the complainant as well as evidences of P.W.3 (complainant), the prosecution case is that demand of bribe was made on 26.7.98. Loan application form to withdraw rupees ten thousand from G.P.F. account was objected to and sent back due to defect in the form and not due to non-payment of bribe. After the said form was re-submitted through the complainant in general manner it is stated that the appellant continued to demand bribe, but there is no date mentioned on which the complainant met the appellant and demand was made. On the other hand, it is clear that by the time trap was laid, loan application from G.P.F. account had already been forwarded to the treasury and the complainant had also received leave salary. In view of such nature of evidence, I, relying on the aforesaid decision of the Rajasthan High Court, hold that there is no evidence as to on which date demand was raised by the appellant for payment of bribe and by the time trap was laid there was no work pending with the appellant and therefore there could not have been any occasion for him to demand money as alleged. I have not referred to other decisions cited by the learned counsel for the appellant since they relate to appreciation of evidence and law in that regard is settled. Though it is not necessary that the bribe must be paid before the work is done and the same could also be paid after the work is done in the facts of the present case as discussed earlier, demand of bribe as alleged is not free of doubt and therefore cannot be accepted.

6. In view of the above findings that on the date trap was laid there was no Work pending with the appellant, and there is no evidence to show dates on which the

complainant met the appellant and demand for payment of bribe was made, the prosecution must fail. Accordingly, judgment and order of Court below are set aside and the appeal is allowed.

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