SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Hareram Kaurav Vs. State of Madhya Pradesh

Hareram Kaurav Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/849237

Court : Madhya Pradesh

Decided On : Apr-09-2010

Judge : Rakesh Saksena and; Sushma Shrivastava, JJ.

Appellant : Hareram Kaurav

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

Sushma Shrivastava, J.

1. Appellant has preferred this appeal against the judgment dated 27.1.06 passed by Special Judge, Bhopal in Special Case No. 16/04 convicting him under Section 7 of Prevention of Corruption Act, 1988 and sentencing him to rigorous imprisonment for six months with fine of Rs. 2,000/-, in default further rigorous imprisonment for one month.

2. As per prosecution case, at the relevant time appellant Hareram Kaurav was posted as Station Officer, Police Station Berasiya, District Bhopal, while co-accused Chhatrapal Singh was posted as Head Constable. It is alleged that on 26.5.03 about 8 'O'clock at night, when complainant Bhairolal went to Police Station Berasiya alongwith his younger brother Hariom to lodge a report against one Harprasad Sahu and others for assaulting his younger brother and beating his

she-buffalo for entering his field, Station Officer Hareram Kaurav asked for a sum of rupees five thousand for writing the report and for shielding Hariom against the report lodged against him and his father at the Police Station and directed the complainant to meet Head Constable Chhatrapal Singh. When complainant Bhairolal expressed his inability to pay such a huge amount, Head Constable Chhatrapal Singh, after consulting the appellant, informed him that Station House Officer Hareram Kaurav was not agreeing to take less amount than two thousand rupees. Then complainant Bhairolal paid one thousand rupees to Head Constable Chhatrapal Singh and undertook to pay the remaining amount later on, but he was not willing to pay rest of the amount of rupees one thousand, so he lodged a written report with Superintendent of Police Lokayukt, Bhopal against the appellant for apprehending him red handed taking the bribe of rupees one thousand from him.

3. The written report dated 2.6.03 submitted by complainant Bhairolal to Superintendent of Police Lokayukt, Bhopal was forwarded to D.S.P. Shankarlal Dharse for necessary action. Thereupon D.S.P. Shankarlal Dharse gave a micro tape-recorder and a cassette to complainant Bhairolal with a direction to record the conversation of demand of bribe. The tape-recorder alongwith cassette and another written application was handed over back in the office of Lokayukt Police by complainant Bhairolal on 4.6.03, which was marked to Inspector Chand Singh Bamaniya of Lokayukt Police, who played the cassette in presence of complainant Bhairolal and two witnesses, namely, Chandrashekhar Viadya and Radheyshyam Mishra and prepared the transcript of the tape-recorded conversation between appellant Hareram Kaurav and complainant Bhairolal and also effected the seizure thereof. Inspector Chand Singh Bamaniya thereafter recorded the FIR and called two official witnesses for arranging trap against the appellant and co-accused Chhatrapal Singh. It is said that after verification of the facts mentioned in the written complaints dated 2.6.03 and 4.6.03 of the complainant by the two official witnesses, a pre-trap panchnama was prepared and phenolphthalein powder was applied to the currency notes of one thousand rupees produced by complainant Bhairolal for being given as bribe to the appellant and same were kept in the pocket of the complainant with necessary directions for tape-recording the conversation between him and the appellant at the time of giving the bribe.

4. The other formalities required for trap proceedings were also completed and the trap party proceeded to Police Station Berasiya, but the trap could not be successful due to non availability of Station Officer Hareram Kaurav at the Police Station because of his being busy with some investigation in murder case and having gone to Bhopal. However, after due investigation and obtaining sanction for prosecution, appellant Hareram Kaurav, the Station House Officer and Head Constable Chhatrapal Singh were prosecuted under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for brevity the 'Act') and were put to trial before Special Judge, Bhopal.

5. Appellant Hareram Kaurav and co-accused Chhatrapal Singh abjured the guilt and pleaded false implication at the instance of the complainant, who wanted to hush up the case registered against his father and brother at Police Station Berasiya.

6. Learned Special Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted co-accused Chhatrapal Singh of the charge under Section 7 and Section 13(1)(d) read with 13(2) of the Act, extending him benefit of doubt, but found the appellant guilty under Section 7 of the Prevention of Corruption Act for agreeing to accept, being a public servant, the bribe of two thousand rupees from the complainant, convicted and sentenced him as aforesaid by the impugned judgment, which has been challenged in this appeal.

7. We have heard the learned Counsel for the parties.

8. Learned Counsel for the appellant submitted that the trial court erroneously convicted the appellant without there being any cogent and reliable evidence and material against him. Learned Counsel for the appellant emphatically urged that indisputably the trap arranged against the appellant having failed, there was no cogent evidence and material on record that he demanded or accepted the bribe or agreed to accept the same. Learned Counsel for the appellant further submitted that the trial court gravely erred in placing implicit reliance on the inconsistent testimony of complainant Bhairolal, who was declared hostile by the prosecution and who gave inconsistent and discrepant version at different stages and who even disowned the contents of the written complaints made by him. Learned

Counsel for the appellant further urged that the trial court also erred in treating the so-called tape-recorded conversation and the transcript as a corroborative piece of evidence, though it was not duly proved that any conversation demanding bribe took place between the appellant and the complainant and that in absence of proof of tape-recording of such conversation, the transcript could not be taken into consideration. According to learned Counsel for the appellant, the trial court failed to consider that complainant Bhairolal had a motive for false implication of the appellant as he wanted to hush up the case registered against his father and brother and, therefore, lodged a false report after seven days.

9. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant.

10. We have gone through the entire evidence on record.

11. Complainant Bhairolal (P.W-2) is the principal witness, who lodged the report against appellant Hareram Kaurav, who was undisputedly posted as Station House Officer at Police Station Berasiya at the relevant time and was thus a public servant. Complainant Bhairolal (P.W-2) deposed in his evidence that two years prior to his deposition, he had gone to Police Station Berasiya alongwith his brother to lodge a report against one Harprasad Sahu, who had quarrelled with his brother in the field, but his report was not recorded and he was asked by Station House Officer Hareram Kaurav to contact Head Constable Chhatrapal Singh and to give a sum of rupees five thousand. According to complainant Bhairolal (P.W-2), he gave a sum of rupees one thousand to Head Constable Chhatrapal Singh and assured to give the remaining amount of one thousand later on, and thereafter went to SP Office and narrated the incident, where he was given a tape with a direction to record the conversation of the demand of bribe; the next day he went to appellant Hareram Kaurav, conversed with him and offered to give him the remaining amount and thereafter he returned the tape in the SP Office and signed the transcript memo (Ex.P-16) in this behalf.

12. The main thrust of the submission of learned Counsel for the appellant in respect of the testimony of complainant Bhairolal (P.W-2) has been that his evidence is not at all trustworthy and he did not make any positive statement

against the appellant regarding demand or acceptance of bribe and it was only when he was declared hostile and cross-examined by the prosecution that he admitted certain facts at the instance of the public prosecutor, but again deviated from his earlier version and categorically deposed, when cross-examined by the defence, that appellant and the co-accused never talked to him regarding bribe, nor they made any demand from him, and the complainant (P.W-2) even disowned the contents of two written reports (Ex.P-18 and Ex.P-19), thus his evidence was not at all reliable and acceptable without any independent corroboration. Reliance was placed in this behalf on the decision of the Apex Court rendered in the case of Suraj Mal v. The State of Delhi Administration reported in : AIR 1979 Supreme Court page 1408.

13. On careful scanning of the entire evidence of complainant Bhairolal (P.W-2), it is manifest that he has given inconsistent and discrepant version throughout his deposition. First of all in his examination-in-chief he deposed about demand of rupees five thousand from him by the Station Officer Hareram Kaurav and Head Constable Chhatrapal Singh for writing his report and payment of rupees one thousand to Chhatrapal Singh, but later on deviating from his earlier statement, he declined to speak anything against co-accused Chhatrapal Singh and even refused to identify him. Likewise, earlier in his examination-in-chief complainant Bhairolal (P.W-2) deposed simply of having gone to SP Office and narrated the incident and refused to have given any written or typed report there, while later on he admitted his signatures on the FIR (Ex.P-17) as well as on his written reports (Ex.P-18 & P-19) dated 2.6.03 and 4.6.03 respectively.

14. It is also pertinent to point out that during his cross-examination by the Public Prosecutor, he refuted the suggestion that he himself submitted typewritten report (Ex.P-18) and another report (Ex.P-19) on 4.6.03 at the office of Lokayukt, though he admitted his signatures on both the written reports (Ex.P-18 and Ex.P-19) as well as on FIR (Ex.P-17) recorded by the Police. Apposite to add that during cross-examination by the defence in para 17 of his deposition complainant Bhairolal made an adverse statement that the two applications (Ex.P-18 and Ex.P-19) were never got typed by him, but got typed by Police Lokayukt and he had signed Ex.P-18 and Ex.P-19 as well as the Ex.P-17 at the directions of the Police Lokayukt

Bhopal.

15. Although complainant Bhairolal (P.W-2) admitted at one place during cross-examination by the Public Prosecutor that the contents of Ex.P-18 and Ex.P-19 were read over to him and verified from him by one of the official witnesses, but next moment he completely changed his stand and said that the relevant portions marked as B to B in Ex.P-18 and Ex.P-19 (relating to the demand of bribe) were got typed by officers of Lokayukt and not narrated by him and he had merely signed on them. More so, in para 22 of his deposition, complainant Bhairolal clearly stated that he had no talks of bribe with the appellant/accused persons and none of them made any demand from him.

16. In view of the aforesaid glaring inconsistencies appearing in the evidence of complainant Bhairolal (P.W-2), his stray statements made here and there that Station House Officer Hareram Kaurav demanded rupees five thousand or two thousand for writing a report, particularly when, later on he denied that appellant made any such demand or asked for a bribe, cannot be considered as reliable and acceptable beyond periphery of doubt.

17. There is no doubt about the legal preposition that even a part of the testimony of a hostile witness can be accepted if it is found to be reliable and trustworthy upon careful scrutiny thereof, but in the instant case the testimony of complainant Bhairolal (P.W.-2), who has changed his version at every step, cannot be treated as reliable and acceptable beyond reasonable doubts. Needless to point out that the younger brother of the complainant, who accompanied him to lodge the report at the Police Station Berasiya, has not been examined to corroborate the allegation of demand of bribe by the appellant in connection with the writing of his report at Police Station Berasiya.

18. Learned Counsel for the appellant also submitted that even as per contents of written report (Ex.P-18) allegedly given by complainant Bhairolal (P.W-2), the alleged demand was made on 26.5.03 on two counts, firstly for writing an FIR and secondly for shielding his father and brother from the counter report registered against them at Police Station Berasiya, while as per report Ex.P-27, the offence against his brother and father was registered on 27.5.03, as such there was no

cause for demanding any bribe on 26.5.03 so as to shield them against any counter report. Learned Counsel for the appellant also submitted that complainant (P.W-2) never reported the matter against his adversary, nor he filed any private complainant against him, which he could have done if he was really annoyed with the incident. Whatever it may be, the evidence of complainant Bhairolal (P.W-2) itself, on the whole, is not found to be reliable and dependable so as to arrive at a safe conclusion that appellant Hareram Kaurav being a Station Officer at Thana Berasiya demanded rupees five thousand or two thousand in connection with writing the report of the complainant.

19. The trial court has given much weight to the tape-recored conversation and its transcript (Ex.P-16) as corroborative evidence to the alleged demand of bribe by the appellant, while according to learned Counsel for the appellant, the tape-recording of any conversation between the appellant and the complainant regarding alleged demand of bribe, was not proved and the transcript (Ex.P-16) could not be taken into consideration in view of the law laid down by the Apex Court in the case of Ram Singh and Ors. v. Col. Ram Singh reported in : AIR 1986 Supreme Court page 3 and reiterated in the case of All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and Ors. reported in (2009)5 Scc 417.

20. The Apex Court in the case of Ram Singh (Supra) has laid down the following conditions for admissibility of tape-recorded statement:

1. The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

2. The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

3. Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of

context and, therefore, inadmissible.

4. The statement must be relevant according to the rules of Evidence Act.

5. The recorded cassette must be carefully sealed and kept in safe or official custody.

6. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

21. In view of aforesaid legal position, we proceed to examine the evidence available on record with regard to the so-called tape-recorded statement of the appellant in respect of the demand allegedly made by him as a public servant being posted as Station Officer, Police Station Berasiya. Dy. Supt. of Police Shankarlal Dharse (P.W-5) has deposed in his evidence that after receipt of the typed complaint (Ex.P-18) from SP Lokayukt for further necessary action, he had handed over a mini tape-recorder alongwith a new cassette to complainant Bhairolal for tape-recording the conversation relating to the demand of bribe from him and to give it back in the office of Lokayukt. According to Chand Singh Bamaniya (P.W-8), on 4.6.03 the second typed complaint (Ex.P-19) was forwarded to him for necessary action and a mini tape plus cassette handed over to complainant was also produced before him alongwith typed complaint (Ex.P-19); he had then played the cassette before the complainant, Dy. Supt. of Police Shankarlal Dharse and two other witnesses of his office, namely, Chandrashekhar Vaidya and Radheyshyama Mishra and after hearing the same, he prepared the transcript of tape-recorded conversation (Ex.P-16) and then recorded the FIR and thereafter arranged for a trap.

22. Although complainant Bhairolal (P.W-2) corroborated this fact that he was given a tape in the SP office to record the conversation of demand of bribe and he had returned the same in the SP Office, where it was played and transcript memo (Ex.P-16) was prepared, which also bears his signatures, but he never specifically stated before the trial court that he had tape-recorded the conversation between him and the Station Officer Hareram Kaurav. He simply said that he had talked to Hareram Kaurav at Police Station Berasiya after receipt of the tape from the

Lokayukt Police and next day he had returned the tape at Lokayukt office informing that he had tape-recorded the conversation. In fact it does not transpire from his testimony as to what dialogue or talks took place between him and the Station Officer Hareram Kaurav after receipt of the tape, and that the same was recorded. On the other hand, as per para 2 of his deposition, after taking the tape when he went to Station Officer Hareram Kaurav and told him to write his report and accept the remaining amount, then he said 'nothing' and thereafter he came to Bhopal and returned back the tape in the SP office.

23. It also does not transpire from the evidence of complainant Bhairolal (P.W-2) that the transcript (Ex.P-16) of the so-called conversation, was ever read over to complainant (P.W-2) before the Court. Although complainant Bhairolal (P.W-2) deposed at one place that the tape was played and heard by Lokayukt Police and then transcript memo (Ex.P-16) was prepared, but he categorically deposed in para 17 of his deposition that he does not know as to what was written in Ex.P-16 and he had merely signed it. Evidently thus, the contents of Ex.P-16, i.e. the transcript of the so-called conversation do not stand proved to be the conversation between the appellant and the complainant, nor it is proved to be in the voice of appellant Hareram Kaurav. On the other hand, the cassette article 'A' when played in the Court, as per note appended to para 14 of the deposition of the complainant (P.W-2), its voice was not clear and it was unintelligible. In such a situation, it could not be said that the voice recorded in the cassette in question was that of the appellant or that it related to any so-called demand of bribe. Consequently, the transcript (Ex.P-16) could not be treated as the transcript of the so-called conversation between the appellant and complainant Bhairolal (P.W-2).

24. Apposite to add that Inspector Chand Singh Bamaniya (P.W-8), who prepared the transcript memo (Ex.P-16) and claimed to have played it in the presence of D.S.P. Shankarlal Dharse (P.W-5), complainant (P.W.2) and other witnesses, admitted in cross-examination that he was not conversant with the voice of the appellant, nor did he prepare specimen cassette of the voice of the appellant and the complainant, nor he got it examined by any expert. According to Inspector Chand Singh Bamaniya (P.W-8) he had accepted the version of complainant (P.W-2) that it was the voice of the appellant, but, as said earlier, complainant

Bhairolal (P.W-2) himself never identified the tape-recorded statement (Ex.P-16) to be in the voice of appellant, rather he even failed to say that he had tape-recorded any such conversation of any such demand of bribe between him and the appellant.

25. It is also significant to mention that D.S.P. Shankarlal Dharse (P.W-5) has also not corroborated this fact that the tape-recorded cassette in question was played before him or transcript memo was prepared before him. On the other hand according to D.S.P. Shankarlal Dharse (P.W-5), the complainant never came back to him with the cassette in question. The other two witnesses, namely, Chandrashekhar Vaidya and Radheyshyam Mishra, in whose presence transcript memo (Ex.P-16) of the so called tape-recorded statement was said to have been prepared by Inspector Chand Singh Bamaniya (P.W-8), were not examined to throw any light in this regard. In the aforesaid facts, the transcript (Ex.P-16) of the so called tape-recorded statement could not be validly accepted as the evidence of so called conversation between the appellant and complainant Bhairolal (P.W-2), particularly when the recording of such conversation was not duly proved by the evidence on record.

26. It is quite evident from the testimony of Inspector Chand Singh Bamaniya (P.W-8), Komal Singh Sisodiya (P.W-6) coupled with the evidence of two official witnesses, namely, C.K. Dubey (P.W-3) and B.P. Tiwari (P.W-4) plus the evidence of complainant Bhairolal (P.W-2) himself that the trap arranged against the appellant in connection with the demand and acceptance of bribe by the appellant had failed and thus, there was no evidence of acceptance of any bribe by him from the complainant. Even the amount of rupees one thousand alleged to have been paid by the complainant (P.W-2) to Head Constable at the instance of the appellant was never recovered from either of them.

27. In view of the aforesaid discussion, it is apparent that there is no dependable evidence of any demand or acceptance of bribe by the appellant from the complainant. The evidence of complainant Bhairolal (P.W-2) in this behalf is found to be quite suspicious and not acceptable beyond periphery of doubt.

28. Thus, we are of the considered opinion, that the prosecution failed to establish by cogent and dependable evidence that appellant Hareram Kaurav being a public servant demanded, accepted or agreed to accept or attempted to obtain any bribe or illegal gratification from the complainant as a motive or reward for performing the official act of recording of FIR of the complainant.

29. In the wake of aforesaid, the conviction of appellant under Section 7 of the Prevention of Corruption Act cannot be safely maintained and deserves to be set aside.

30. Consequently, the appeal is allowed. The conviction of appellant and the impugned sentence passed on him under Section 7 of the Prevention of Corruption Act are hereby set aside and he is acquitted of the charge.

31. Appellant is on bail. His bail bonds shall stand discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com