

Dayashanker Singh. Vs. the State of M P.

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Court : Chhattisgarh

Decided On : Aug-31-2010

Judge : Mr T P Sharma, J.

Acts : Indian Penal Code (IPC) - Section 161; [Prevention of Corruption Act, 1947](#) - Sections - 4(1), 5(1)(d) read with 5(2); Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 313

Appeal No. : Criminal Appeal 972 of 1990

Appellant : Dayashanker Singh.

Respondent : The State of M P.

Advocate for Def. : Mr R R Sinha, Adv.

Advocate for Pet/Ap. : Mrs Anju Ahuja, Adv.

Judgement :

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 12-10-1990 passed by the 4th Special Judge, Bilaspur in Special Criminal Case No.6/88, whereby & whereunder learned Special Judge after holding the appellant guilty for demanding and accepting illegal gratification other than legal remuneration by misusing the office, convicted the appellant under Sections 161 of the I.P.C. & 5 (1) (d) read with Section 5 (2) of the [Prevention of Corruption Act, 1947](#) and sentenced him to undergo R.I. for one year and to undergo R.I. for two years & pay fine of Rs.2,000/-, in default of payment of fine to further undergo R.I.

for six months, respectively.

2. Conviction is impugned on the ground that without any iota of demanding and accepting bribe, the Court below has convicted & sentenced the appellant and thereby committed illegality.

3. Case of the prosecution, in brief, is that the appellant was posted as Ranger in the Forest Department at Achanakmar Reserve Forest. Complainant Sohanlal (PW-1) was dealing with mahul leaves, a forest produce. In the month of October, 1986 the complainant sent truck for transportation of mahul leaves, but the appellant returned the truck and directed the clerk of the complainant to inform the complainant to come with money for issuance of transit pass. The complainant was not ready to give bribe. He filed an application before the Deputy Superintendent of Police (Vigilance) on 17-11-86. After preliminary enquiry, trap party was constituted and witnesses R.K. Pandey & Sainat Ram were called. The complainant produced five currency notes of Rs.100/- each, numbers of which were recorded in the preliminary panchnama, same were treated with phenolphthalein powder and kept in the shirt of the complainant. The complainant was directed not to touch the currency notes before giving the same to the appellant and not to shake hand with any other person. He was also directed to give signal after giving the bribe. Reaction of sodium carbonate & phenolphthalein powder was demonstrated. Primary panchnama was prepared vide Ex.P-2. Trap party proceeded for the spot. The appellant was present in his house, trap party took its position, the complainant went to the house of the appellant, the appellant demanded Rs.500/- as bribe and the complainant gave Rs.500/- kept by the trap party in his pocket to the appellant which the appellant received and kept the same in the pocket of his full pant. After giving signal by the complainant, trap party entered in the house of the appellant and after giving introduction, post-trap proceedings were initiated. During the proceedings, the appellant threw the currency notes on the floor. Hands of the appellant and the complainant were washed with sodium carbonate solution which turned into pink colour. Currency notes were taken up by witness Pandey and numbers were tallied. They were also washed with the solution of sodium carbonate which also turned into pink colour. Currency notes and full pant were seized vide Ex.P- 10. Final panchnama was

prepared vide Ex.P-9. Other currency notes and other articles were seized from the appellant vide Ex.P-11. Dehati nalsi was recorded vide Ex.P- 12. F.I.R. was lodged vide Ex.P-13. Seized solution was sent for chemical examination vide Ex.P-14. Presence of sodium carbonate & phenolphthalein powder was confirmed in hand wash solution and pocket wash solution of the appellant vide Ex.P-15A.

4. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. and other documents were seized. Material collected during the course of investigation was placed before the sanctioning authority and the sanctioning authority has accorded sanction vide Ex.P-4. After completion of investigation, charge sheet was filed before the Special Judge, Bilaspur.

5. In order to prove the guilt of the accused, the prosecution has examined as many as nine witnesses. The accused was examined under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence & false implication.

6. The accused has taken specific defence that the complainant has constructed temporary hut in the forest area after cutting the forest produce, forest offence was registered against the clerk of the complainant & the complainant, the clerk of the complainant compromised the offence and the complainant was required to deposit Rs.500/- as fine which he has deposited to the appellant who was competent to receive money and issue receipt, and while he was preparing the receipt, trap party came in the house of the appellant and caught hold of him. The appellant has also taken defence that he was not competent to issue transit pass, previously other authorities have issued transit pass to the complainant, but on that day the complainant has falsely implicated him in the crime in question. The appellant has examined defence witnesses M.R. Thakre (DW-1), S.N. Ram (DW-2), Vinod Bhushan Shukla (DW-3), Jauharilal Shukla (DW-4) & Prakash Yadav (DW-5) in support of his claim.

7. After providing opportunity of hearing to the parties, learned Special Judge convicted & sentenced the appellant in the aforesaid manner.

8. I have heard learned counsel for the parties and perused the impugned judgment as also the record of the trial Court.

9. Learned counsel for the appellant vehemently argued that in the present case, the complainant has never applied for transit pass to the appellant and the appellant was not competent to issue transit pass. The complainant had constructed one temporary hut in the forest area after cutting and removing forest produce through his clerk on which forest offence was registered against him and his clerk. Clerk of the complainant entered into compromise and the competent authority has imposed fine of Rs.500/-. The complainant was required to deposit fine. At the time of alleged incident, the complainant contacted the appellant to deposit fine amount and he has tendered Rs.500/-, the appellant was preparing receipt of the same and at that time, he was caught red handed. The appellant has neither demanded nor accepted bribe, he has demanded and accepted the amount of Rs.500/- as fine for which he was competent. Learned counsel placed reliance in the matter of Banarsi Dass v. State of Haryana¹ in which the Apex Court has held that mere proof of recovery of bribe money from accused is not sufficient to prove the offence, the prosecution is required to prove the factum of demand and acceptance of bribe. Learned counsel further placed reliance in the matter of Ram Prakash Arora v. The State of Punjab² in which the Apex Court has held that evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witness. In a proper case the Court may look for independent corroboration before convicting the accused persons. Learned counsel also placed reliance in the matter of Abdul Rahman Sheikh v. State of M.P.³ in which the High Court of Madhya Pradesh has held that in case of failure of first trap; factum of second trap is not understandable. Learned counsel relied upon the matter of Dwarkaprasad Ramnath Gupta v. State of Madhya Pradesh⁴ in which the High Court of Madhya Pradesh has held that receipt of money by accused raises presumption against him under Section 4 (1) of the [Prevention of Corruption Act, 1947](#), accused may discharge onus by preponderance of probability. Learned counsel further relied upon the matter of Smt. Meena Balwant Hemke v. State of Maharashtra⁵ in which the Apex Court has held that mere recovery of money from pad on the table of the accused is not sufficient to prove the factum of demand and acceptance of bribe.

Learned counsel also relied upon the judgment dated 4- 8-2010 passed by this Court in Criminal Appeal No.749/1993 (Baharata Ram and another v. The State of Madhya Pradesh) in which it has been held that mere recovery of bribe amount is not sufficient to prove the factum of demand and acceptance of bribe. Learned counsel placed reliance in the matter of Ram Kumar Verma v. State of M.P.6 in which this Court has held that mere recovery of tainted currency notes is not sufficient to prove the factum of demand and acceptance of bribe.

10. On the other hand, learned State counsel vehemently opposed the appeal and submitted that in the present case, the appellant has accepted the fact that he has demanded and accepted Rs.500/- from the complainant, but the appellant has offered explanation that he has demanded money as recovery of fine and has not demanded bribe, however, the appellant has failed to discharge his burden and the trial Court has rightly convicted & sentenced the appellant.

11. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence available on record.

12. In the present case, as per the evidence of Sohanlal Agrawal (PW-1) - complainant, Ramdinkar Pandey (PW-8) - Assistant Director (Agriculture) and H.N. Shukla (PW-9) - Inspector, the appellant was found in possession of tainted currency notes which were kept in the pocket of the complainant for giving the same as bribe on demand by the accused. As per the evidence of Sohanlal Agrawal (PW-1), he has given money to the appellant which the appellant had taken. As held by the M.P. High Court in the matter of Dwarkaprasad (supra) and in accordance with Section 4 of the [Prevention of Corruption Act, 1947](#), it raises presumption that the accused has demanded & accepted bribe, but presumption is rebuttable and it can be rebutted by preponderance of probability, no strict proof is required.

13. In order to discharge his burden, the appellant had examined M.R. Thakre (DW-1) - Superintendent working in the Forest Department who has deposed in his evidence that he was competent for compromise relating to forest offence, he has produced and proved document Ex.D-4, document of compromise with complainant Sohanlal Agrawal through Prakash Yadav in which Rs.500/- fine was

imposed. This witness has also proved the documents relating to forest offence viz., Exs.D-5 to D-9, statement of Prakash Yadav Ex.D-10, statement of Ram Singh & Pratap Singh Ex.D-11 and Ex.D-12. This witness has further deposed that he has sent the recovery memo of Ex.D-5 to the Range Officer, Achanakmar.

14. S.N. Ram (DW-2) - Ranger has deposed that money receipt Ex.D-13 contains writing of the appellant. Ex.D-13 is a half written receipt in which the words 'Bilaspur Achanakmar Prakash vaste Sohan Lal Agrawal' have been written. This witness has further deposed that previously transit passes Exs.D-14 to D-18 have been issued to the complainant for transportation of mahul leaves by the Range Assistant. Vinod Bhushan Shukla (DW-3) - Range Officer has also proved Exs.D-13 to D-17. Jauharilal Shukla (DW-4) - Forester has deposed in his evidence that forest offence was registered against Prakash Yadav who entered into compromise and Sohanlal Agrawal has written letter Ex.D-24 to him relating to construction of temporary hut, in his letter pad. Prakash Yadav (DW-5) - clerk of the complainant has also corroborated the document Ex.D-24 and has admitted the registration of forest offence and compromise in the forest offence. These documents are related to 3-10-86 & 4-10-86 prior to the date of commission of offence i.e. 17-11-86.

15. Evidence of these witnesses are based on the documents which cannot be doubted, at this stage and which reveal that clerk of the complainant has collected forest produce without permission of the forest authorities and has started construction of temporary hut for collection and temporary storage of mahul leaves. Forest offence was registered against the complainant through his clerk Prakash Yadav in which he entered into compromise. The complainant has written letter Ex.D-24 to the Forester relating to the same activity. As per Ex.D-4, fine of Rs.500/- was imposed upon the complainant and the complainant was required to deposit Rs.500/- to the forest authorities. Ex.D-13 is half filled copy of money receipt containing the words 'Bilaspur Achanakmar Prakash vaste Sohan Lal Agrawal' which have been written by the appellant. As per the defence of the appellant, the complainant came to him for depositing fine imposed upon him, the complainant produced Rs.500/- which he received and when he was preparing money receipt, trap party came to his house and seized the money. The appellant

has suggested the complainant and the prosecution witnesses to this effect which the complainant has denied.

16. As per the evidence of Vinod Bhushan Shukla (DW-3) - Range Officer & S.N. Ram (DW-2) - Ranger, previously Exs.D-14 to D-18, transit passes, were issued to the complainant relating to transportation of mahul leaves from Achanakmar Reserve Forest at the instance of the complainant. This shows that the complainant has never contacted the appellant for issuance of transit pass and he used to contact another Assistant Ranger for issuance of transit pass. The complainant was previously not in contact with the appellant.

17. In the present case, Deputy Superintendent of Police Markam has conducted trap, but the prosecution has not examined Markam who has conducted trap. Except the complainant, nobody has supported the case of the prosecution that the appellant has demanded and accepted illegal gratification. Inter alia, by examining defence witnesses, defence has tried to establish that the appellant was authorized to collect fine amount, the complainant has tendered Rs.500/- as fine which the appellant has received and at the time of issuance of receipt Ex.D-13, trap party entered in the house of the appellant and seized the aforesaid amount.

18. Defence is not required to prove its case beyond all reasonable doubts; it is required to establish its case by preponderance of probability. Evidence adduced on behalf of the defence is sufficient for drawing suspicion on the case of the prosecution. As held by the Apex Court in the matter of Ram Prakash (supra), evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witness and in a proper case the Court may look for independent corroboration before convicting the accused persons.

19. In the present case, except the complainant nobody has supported the case of the prosecution and the defence has adduced evidence to show that the appellant has demanded and accepted money as fine and not as bribe. As held in the matters of Ram Kumar (supra) and Banarsi Dass (supra), mere recovery of money is not sufficient to establish the factum of demand of bribe.

20. In the present case, considering the specific defence on the basis of ocular and documentary evidence, it is difficult to hold that the appellant has demanded and accepted illegal gratification other than legal remuneration by abusing his office. Evidence adduced on behalf of the defence is sufficient for throwing doubt on the case of the prosecution.

21. In these circumstances, without any further corroboration in absence of evidence of Investigating Officer, it is difficult to hold that the appellant has demanded and accepted illegal gratification. While convicting the appellant, the trial Court has not considered the most material aspect of the case and the fact that the defence has succeeded in throwing suspicion upon the case of the prosecution by preponderance of probability, and thereby committed illegality. Consequently, conviction & sentences imposed upon the appellant under Sections 161 of the I.P.C. & 5 (1) (d) read with Section 5 (2) of the [Prevention of Corruption Act, 1947](#) are not sustainable under the law.

22. The appeal is allowed. Conviction & sentences imposed upon the appellant under Sections 161 of the I.P.C. & 5 (1) (d) read with Section 5 (2) of the [Prevention of Corruption Act, 1947](#) are hereby set aside and the appellant is acquitted of the said charges. He is set at liberty forthwith, if not required in any other case.

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