

GOVERNMENT APPEAL NO.13 OF 1985

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THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 22.02.2006

2. The prosecution case, in short, is that the complainant and his partners had taken lease of the cashew-nut plantation at Gopiballavpur for the year 1978 from the Soil

Conservation Office, Cuttack. On 09.01.1978, they were transporting 28 bags of raw cashew-nuts in the truck bearing registration number OSS 1837 for sale to the Orissa Cashew Company, Bhubaneswar. On the way, the truck stopped at Gandarpur-Sikharpur check gate and the complainant went to the check gate office with the documents for verification. The accused-respondent, who was the Sales Tax Inspector in-charge of the check gate at that time, demanded Rs.600/- from the complainant by way of bribe. After negotiation, the amount was settled at Rs.150/-. However, the complainant expressed his inability to pay the amount then and there as he had no ready cash with him. At this, the accused-respondent suggested that the complainant should leave one bag of cashew-nut at the check gate and take back the same after paying the agreed amount of Rs.150/-. On 04.09.1978, one of the partners of the complainant approached the respondent with Rs.100/- and requested him to release the cashew-nut bag, but the respondent did not agree. After about a week, the complainant and his aforesaid partner again met the respondent at his residence, but the respondent asked them to come to the office after 10.00 P.M. Thereafter, the complainant lodged a complaint against the respondent before the Superintendent of Police (Vigilance), Cuttack. A trap was arranged on the same night and the respondent was caught red handed with the bribe money at the check gate office. The money, which consisted of three fifty rupee currency notes, was seized from the possession of the respondent. One bag of cashew-nut was also seized from the check gate office. A case was registered and investigation was taken up. On completion of investigation, charge-sheet under Section 5(1)(d), read with Section 5(2), of the Prevention of Corruption Act, 1988 was submitted against the respondent.

3. The defence plea was complete denial of the allegation. The specific stand taken by the respondent before the trial court was that the complainant with an ulterior motive of taking away his job

had started a false case against him as per the instruction of the Additional Superintendent of Police, Cuttack and the Managing Director of the Cashew Company. He denied seizure of the tainted notes from him as well as seizure of any cashew-nut bag from the check gate office.

4. In order to prove the case, the prosecution examined as many as 18 witnesses, exhibited 25 documents and proved some material objects. The defence did not choose to examine any witness. The learned Special Judge, Bhubaneswar, who tried the case, after taking into consideration the evidence and other materials on record and after hearing the parties, by his judgment dated 29.09.1984, acquitted the respondent of the above charge. It is this order of acquittal against which the State has preferred the present appeal.

5. Mr. Das, learned Additional Standing Counsel for the Vigilance Department, submits that there are sufficient materials on record against the respondent. There is also clear and cogent evidence regarding demand of money. The evidence of P.Ws. 1, 2 and 12 is very clear in this regard. He also points out that it is clear from M.O. IV that when the respondent washed his hands with that solution, the colour of the solution turned pink.

6. The trial court, after carefully observing M.O. IV, has opined that the solution is colourless and not coloured, as stated by the prosecution witnesses. The I.O. has also admitted in his cross-examination that the colour of the solution in M.O. IV does not appear to be pink.

7 P.W.14, the Additional Commercial Taxes Officer in-charge of Gandarpur-Sikharpur check gate, has stated in his evidence that prior to seizure of the cashew-nut bag under the seizure list (Ext.14), he had not seen it in the premises of the check gate office. He has specifically stated that at the check gate, the seized

goods were usually kept in a room under lock and key and the Additional Commercial Taxes Officer used to keep the key of the said room. The I.O. in his evidence has stated that the cashew-nut bag detained by the respondent had not been kept either in the office room or in the adjoining room or on the verandah.

8. In view of the above, the prosecution allegation that the respondent had accepted the tainted notes before his hands had been washed with sodium carbonate solution becomes doubtful. Moreover, no independent witness has been examined by the prosecution, which throws serious doubt on the genuineness of the prosecution case.

9. For the foregoing discussion, there is no infirmity in the impugned judgment warranting interference by this Court. The Government Appeal having no merit is hereby dismissed.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
 February 22, 2006 / *Routray*