

CRIMINAL APPEAL No.08 OF 1993

Against the judgment and order dated 3.12.1992 passed in Special Case no.36 of 1986 by Shri P.N.Yadav, Special Judge, Vigilance, South Bihar, Patna.

RAZA IMAM RIZVI----- (Appellant)

Versus

STATE OF BIHAR----- (Respondents)

For the appellant: Mr. Shakeel Ahmed Khan,
Sr. Advocate, with
Messrs. Ajay Kumar No.I,
Md. Mushtaque Alam,
Syed Zafar Haider
Humayou Ahmad Khan,

For the Vigilance: Mrs. Anita Sinha,
Sp.PP (Vigilance)

P R E S E N T**THE HON'BLE MR. JUSTICE KISHORE K. MANDAL**

Kishore K. Mandal, J: The present appeal arises out of and is directed against the judgment and order dated 3rd December, 1992 passed by the learned Special Judge, Vigilance (South Bihar), Patna in Special Case no.36 of 1986, whereby the appellant has been found guilty under Section 161 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 01 year. The learned trial court has further found the appellant guilty under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to undergo rigorous imprisonment for 01 year and was also imposed a fine of Rs. 5000/- and in default thereof to undergo rigorous imprisonment for six months.

2) The present case germinates out of the complaint (Ext.12) lodged by one Nagendra Pd. Singh (P.W.13), a retired officer of the Excise Department, which was subsequently treated as an F.I.R. (Ext.3). As per the prosecution case, the appellant during the relevant time was posted as the Under Secretary in the Department of Excise, Government of Bihar, Patna, and as such was a

public servant. The complainant (P.W.13) had retired from the post of Superintendent of Excise sometimes in the year, 1984 and was facing a departmental proceeding which was pending consideration before the government and on account of such pendency of the proceeding his payment of full amount of retrial dues was/were withheld. It is the prosecution case that the complainant (P.W.13) wanted that the proceeding pending against him be dropped and he should be paid the full amount of post retrial benefits. It is an admitted position that the complainant was getting provisional pension on account of the pendency of the proceeding.

3) According to the prosecution, the appellant demanded bribe/illegal gratification to the tune of Rs.25000/-(twenty five thousand) for doing his work relating to pension, gratuity and also the departmental proceeding. It was made known to the complainant (P.W.13) by the appellant that the alleged amount of bribe/illegal gratification shall be shared by different officers of the department including the appellant. The complainant expressed his inability to part with such a huge amount whereafter the appellant is said to have agreed to favour him on payment of a sum of Rs. 2000/-(two thousand) as bribe. Such a demand of bribe/illegal gratification by the appellant was made on 25.11.1986. The complainant (P.W.13) was not ready to even pay the same and as such he approached the officials of the Vigilance Department on 25.11.1986 and filed his complaint (Ext.12) with the D.I.G., Vigilance, Patna, who, vide his endorsement (Ext.2/2), instructed the Officer In-charge of the Vigilance Police Station (P.W.3) to take appropriate action. Further the prosecution case is that one Sri

Raghubir Prasad, a Vigilance Officer, (P.W.1) was entrusted the job of verification of allegation vide an endorsement (Ext.2/3) on the complaint. Thereafter, it is alleged, Sri Raghubir Prasad (P.W.1) accompanied the complainant on the same day to *prima facie* verify the allegation levelled by the complainant in his complaint. It was recess time at the Secretariat, the complainant in presence of Shri Raghubir Prasad (P.W.1) met the appellant within the precinct of the Secretariat, who once again demanded the bribe/illegal gratification to get his work favourably disposed of in the government. It was agreed that the same shall be paid tomorrow. On making such verification Shri Raghubir Prasad (P.W.1) submitted his verification report (Ext.1) on the same day to the Vigilance authority concerned. After consideration of the said report, the authority of the Vigilance department directed for registration of a formal F.I.R. and accordingly F.I.R. (Ext.3) was drawn up on the same day and a raid/trap team was organized to lay a trap on the following day in order to arrest him red handed while accepting the bribe/illegal gratification so demanded by him. The trap team was comprised of Sri Ramshray Lal, Dy.S.P. (P.W.5), Raghubir Prasad, Inspector (P.W.1), Reyaz Ahmad, Sub Inspector (P.W.2), Jainandan Singh, Inspector (P.W.4), Pramod Kumar Singh, Assistant Sub-Inspector (P.W.9), G.Hembrum, Sub Inspector (P.W.10) and the complainant (P.W.13). On 26.11.1986 the said team assembled in the office of Ramshray Lal, Dy.S.P. (P.W.5), where the complainant (P.W.13) produced twenty G.C. notes of denomination Rs.100/- each before P.W.5 and they were returned to him after being treated with Phenolphthalein powder and their numbers were noted down

vide the memorandum (Ext.4). Jainandan Singh (P.W.4) was given the role of a shadow witness (watcher). He was directed to ensure the overhearing of talks between the complainant and the appellant and thereafter to clean his face with handkerchief as soon as the bribe/illegal gratification is demanded, tendered and accepted so that the other members of the raiding party available in and around the appellant could capture him red-handed. The prosecution case further is that the team proceeded to the Secretariat at about recess time. The appellant came out from his office and after locating the complainant sitting in a Car proceeded towards him and sat down beside him on the front seat of the Car and thereafter, it is alleged, the complainant, as per agreement, handed over the tainted G.C.notes to the appellant, which was accepted by him. The appellant counted that amount and kept them in the pocket of his full paint. On seeing the accused accepting the amount the shadow witness (watcher) (P.W.4), who was standing close by, gave the pre-determined signal and thereafter the members of the trap team immediately rushed and surrounded the appellant. The leader of the team Ramashray Lal (P.W.5) thereafter disclosed his identity and challenged the appellant that he had demanded and accepted the bribe/illegal gratification from the complainant (P.W.13). The accused appellant became surprised and he was not able to speak anything. The incident, according to the prosecution had taken place within the precinct of the Secretariat and as such attracted a crowd and out of the said crowd two persons, namely, Dilip Jha (P.W.11) and Vijay Kumar (P.W.12) were picked as independent witnesses and, it is said, in their presence P.W.4 searched the person of the appellant. In

course of the search the aforesaid currency of notes amounting to Rs.2000/- were found and recovered. Such recovery was made from the left pocket of the full pant (trouser) which the appellant was wearing at that time. The further case of the prosecution is that in order to avoid the unsavory situation the appellant was taken to the office of the Dy.S.P. (P.W.5), where the seizure memo (Ext.5) was prepared after undergoing the process of tests and sealing. In order to confirm that the appellant received the said bribe, it is alleged, the seized notes were compared with the numbers of notes already mentioned in the pre-determined memorandum (Ext.4) and they were found to be identical. The fingers and the pocket of the full pant of the appellant were also treated with the solution whereafter the solution turned pink.

4) The investigation was whereafter taken up and Manoranjan Kavi, Inspector, (P.W.14) was made the Investigating Officer of the case. Upon conclusion of the investigation the chargesheet was made and thereafter the cognizance was taken. The appellant denied the allegation and claimed to be innocent and hence the trial.

5) At the trial, the prosecution, in order to prove the allegation/charge got examined altogether 15 P.Ws. P.W.1 Raghubir Prasad is the Vigilance Officer, who is also the verifier of the complaint. He has proved the verification report (Ext.1). Reyaz Ahmad, Sub Inspector, (P.W.2) is a police officer of the Vigilance department, who has been tendered by the prosecution. Arbind Prasad, Officer In-charge of the Patna Vigilance Police Station, (P.W.3) is not the member of the trap team. He has proved the formal F.I.R. (Ext.3), Jainandan Singh, Inspector, (P.W.4) is an officer of the Vigilance Department and is a

member of the trap team/party. Ramshray Lal (P.W.5) is the Dy. S.P. in the Vigilance Department and under whose leadership the entire team worked and the trap was laid. Subrato Gupta, (P.W.6) is the Senior Scientific Officer, Forensic Science Laboratory, who has proved the laboratory report (Ext.9). Thakur Bishnu Shankar Singh (P.W.7) is the Senior Law Officer, Law Department, who has proved the sanction for prosecution of the appellant (Ext.10). Surnedra Kumar Singh (P.W.8) is the Registrar of the Excise Department, who has proved the government files relating to pension (Ext.11) and departmental proceeding (Ext.11/1). Pramod Kr. Singh (P.W.9), who is the Vigilance Officer, has been tendred. G.Hembrum (P.W.10) is the Sub Inspector of the Vigilance, who is member of the trap team. P.W.11 Dilip Jha and P.W.12 Vijay Kumar are two independent witnesses, who had been picked up by P.W.5 from the members of the mob assembled around the scene of occurrence, who are said to be the witnesses of the seizure memo. Nagendra Pd. Singh (P.W.13) is the complainant. Manoranjan Kavi (P.W.14) is the Vigilance officer, who took up the investigation soon after the trap was laid. Sardanand Singh (P.W.15) is another Vigilance officer, who had taken charge of the investigation of the case at later stage.

6) Learned counsel for the appellant while assailing the impugned judgment and order has submitted that the charge/allegation leveled against the appellant has not been proved beyond all shadow of doubt. While assailing the judgment under appeal the learned counsel has made the following submissions:

- i) There was no occasion for the appellant to demand the bribe/illegal gratification.

ii) The recovery/seizure of the notes given as bribe from the possession of the appellant is not free from doubt in view of the several circumstances emanating from the evidence.

iii) The sanction accorded by the authority permitting the prosecution of the appellant (Ext.10) is mechanical as the same does not deal with all aspects of the matter.

7) While elaborating on the first point, learned counsel for the appellant draws attention of the court to Exts.11 & 11/1. Ext.11 is the government file relating to the pension of the complainant (P.W.13). Learned counsel for the appellant submits that the said file was dealt with by the appellant on 28.5.86, in which he made his notes as per rule and thereafter it went to the higher authority concerned for consideration. Ext.11/1 is the file which deals with the departmental proceeding of the complainant. Learned counsel for the appellant in reference to the notings made in the aforesaid files of the government states that the appellant as the Under Secretary in the said department had made his notes and/or recorded his opinion thereon on 3.10.86 itself and thereafter the files were placed before the other higher authority for consideration. Relying on these notings appearing in the files (Ext.11 & 11/1), it has been submitted that there was *prima facie* no occasion for the appellant to demand bribe/illegal gratification and correspondingly the complainant being a retired officer of the same department had no occasion to oblige the appellant by paying the alleged bribe so demanded by the appellant. Reference in this regard was made to the judgment of Apex Court rendered in Stat vs. K. Narasimhachary (2006 Cri.L.J.518).

8) Learned counsel for the appellant submits that admittedly the records reveal that the complainant, who retired 3 years ago (sometime in 1984), was an officer of the said department and he must have known the procedure(s) which is/are adopted in pushing the file in the Secretariat. Based on these facts appearing on the record, particularly, the contents of the complaint (Ext.12), learned counsel for the appellant submits that the demand of bribe made by the appellant as such is not free from doubt as, admittedly, the appellant acting as Under Secretary in the Excise Department dealt with the files of the complainant (P.W.13) much prior to 25.11.1986.

9) Highlighting the second point, learned counsel for the appellant submits that in such a case where trap is being laid and all the officers of one department are involved the presence of independent witness from all corners is the prime requirement of law in order to convince that the occurrence had taken place in the manner depicted by the prosecution.

10) In the present case the incident, admittedly, had taken place within the premises of the Secretariat of the government and it was the recess time. According to the prosecution, the trap team had reached the place (office premises) at about 1.00 O' Clock in the noon. At about 1.10 O' Clock the appellant emerged from the office and straightway proceeded towards the Car of the complainant (P.W.13) where he was sitting at the driver seat. The prosecution case is that the appellant reached near the Car, opened its gate and sat just by the side of the complainant (P.W.13) on the front seat and the bribe/illegal gratification was tendered and received inside the car.

11) As per the evidence on record although the search was carried out at the place of occurrence but the seizure list/seizure memo was not prepared at the said place. The evidence of Ramashray Lal (P.W.5), who was the Dy. S.P. and leading the raiding team, is to the effect that the raiding team remained in operation at the scene of the occurrence for about 3 hours. It further appears from the evidence of this P.W. that a detailed entry with regard to the event taking place at the place of occurrence was incorporated by him in the diary (Ext.A.). Learned counsel referring to the evidence of P.Ws.11 & 12 (independent witnesses selected by the prosecution at the place of occurrence) has submitted that these P.Ws. have stated that no seizure of any article was made and signature of witnesses including him/them obtained thereon at the place of the occurrence. They were asked to reach the Vigilance Office at about 4 O,Clock in the evening and all the post trap formalities were carried out at the Vigilance Office after 4 P.M.

12) P.W.11 in his examination in chief has stated that the trap team after arrest of the appellant took him to the Vigilance Office and they (independent witnesses) were directed to come to the said office. He has admitted that he went to the Vigilance Office on a Scooter. Similar is the statement of P.W.12 Vinay Kumar in para - 2 of his deposition. Referring to the evidence of Manoranjan Kavi (P.W.14) as set out in paras - 5 & 6 of his deposition, it has been submitted that this P.W. being an officer/I.O. of the department visited the Vigilance Office (Headquarters) on 26.11.1986 at 6.00 P.M. but no document concerning the case including the material exhibits was/ were handed over to him. No documents including the trap seizure memo

was/were handed over to him. In Para - 6 of the deposition, this witness appears to have stated that on the next day (26.11.1986) at 10.30 O'Clock, he met with the leader of the trap team (P.W.5) but on this occasion also no document including the seizure list and material exhibits concerning the case was/were handed over to him.

13) Learned counsel for the appellant referring to the supplementary C.D. (Ext.A) prepared by the P.W.4 at the place of occurrence (Secretariat Premises) submits that as per the contents of this Exhibit as also somewhat consistent evidence of the members of the trap team including that of P.W.5 indicate the trap team remained operative at the place of occurrence for about 3 hours but surprisingly the seizure list(s) was/were not made and prepared there. According to the counsel, in all fairness, there was sufficient time to conduct the post trap paraphernalia at the place of occurrence itself and to get the seizure memo made and signed by the witnesses including P.Ws. 11 & 12 (independent witnesses). According to the appellant, this creates a serious doubt about the veracity and truthfulness of the process of the trap devised by the authorities.

14) Learned counsel for the appellant has further questioned the independent status of the two independent witnesses (P.W.11 & 12). Referring to the evidence of P.W.11 (Dilip Jha) at para 5, it has been submitted that this P.W. had admitted that the seizure of the currency notes was not made in his presence at the Secretariat premises. In para - 4 of his deposition, this witness has accepted that on the date of occurrence (26.11.1986) he was an examinee of Master of Arts (M.A.). Similarly P.W.12 has also stated that he had no work in the Secretariat

on that particular day and, in fact, he had accompanied one boy who had some job in the Education Department of the Government. Learned counsel for the appellant has further submitted in reference to the evidence of this P.W. (appearing at para -11) that this P.W. had accepted that he is related to a retired officer of the same department, namely, Y.N.Sinha.

15) Learned counsel for the appellant draws attention of this court to the evidence of P.W.5 appearing at para - 4 and P.W.12 appearing at para 7 and submitted that these P.Ws. have admitted that although a crowd had assembled at the place of occurrence but there was absolutely no hindrance put by any member of the crowd in carrying out the functions and duties of the trap team at the said place. The trap party although stayed at the place of occurrence for nearly 03 hours but the appellant was driven to the Vigilance Office in the company of officials of the trap team and the independent witnesses (P.Ws. 11 & 12) were instructed to come to the Vigilance Office for completing the post trap process, that is, holding the chemical test and preparing the seizure memo/material exhibits.

16) Learned counsel for the appellant submits that in such a matter the prosecution has to take care and precaution while selecting an independent witnesses. While selecting an independent witness it must be kept in mind that that witness must be respectable and reliable so that his credibility may not be questioned and all the actions taken by the officials of the vigilance department including recovery, seizure and preparation of post trap memo(s) remain aboveboard and any suspicion is not created in the mind of the court.

17) With regard to the third point no serious arguments have been advanced by learned counsel for the appellant. It has only been indicated as one of the points but the court was not taken to the relevant evidence in this regard and no further submission was made by learned counsel for the appellant.

18) Summarizing the evidence on the point, as noticed above, it has been submitted before this court that, in all fairness, the prosecution should have completed the entire process at the place of occurrence, particularly, considering the fact that the team remained operative at the place of occurrence (Secretariat premises) for about 3 hours and that there was no hindrance in performance of their duties by the people assembled at the alleged place of occurrence and that the evidence of PWs 11 and 12 (independent witnesses) do not inspire confidence as they admit of suspicion at paces.

19) Learned Special Public Prosecutor appearing on behalf of the Vigilance Department, on the contrary, has supported the judgment. According to her, there is evidence in the shape of P.Ws.1,4,5,11,12 & 13 to indicate that the complainant (P.W.13) was facing a proceeding and his post retirement benefits were withheld. The appellant during the relevant time was posted and working as under Secretary in the Excise Department, Government of Bihar, and was definitely involved in the decision making process so far the work of the complainant is concerned. According to her, the verification of the allegation was made by P.W.1 (Raghubir), who had proved to the effect that the appellant had demanded the illegal gratification which was subsequently, on the next date paid to and received by the appellant by way of illegal gratification. It has been

further submitted that considering the scenario it was absolutely nothing unusual in getting the recovery of G.C.notes effected not at the said place of occurrence by preparing seizure memo/list and completing the post trap formalities and instead carrying the appellant and the witnesses to the Vigilance Office and thereafter conducting the entire chemical test confirming the acceptance and recovery of the illegal gratification in order to favour the complainant. It has further been submitted that admittedly the appellant was a public servant and the sanction for prosecution was granted on due consideration of the materials on record. The sanction order is Ext.10, which was proved by P.W.7 (Thakur Bishnu Singh) the Senior Law Officer of the Law Department, Government of Bihar. It has also been submitted that P.W.6 (Subroto Gupta) has deposed before the court and proved the forensic report (Ext.9). In regard to credential of the two independent witnesses so produced by the prosecution (P.Ws. 11 & 12), learned counsel submits that it was just a chance that these two witnesses were selected by the prosecution, particularly, the P.W.5 (Ramashray Lal), the leader of the team. She has further submitted that in their deposition the appellant has not been able to get anything to suspect their credential save and except that they were ordinarily not supposed to be present there on the alleged date and time of the occurrence and that seizure list/memo was not prepared at the Secretariat, the scene of occurrence just after the acceptance.

20) I have considered the submissions made by the respective counsels and perused the relevant evidence so produced in support of their submissions.

21) In this case the two independent witnesses (P.Ws.11 & 12) have been selected by the prosecution. They were, in the ordinary course of business, not required to be present at the place of occurrence at the relevant date and time. It further appears that at least one witness (P.W.12) has accepted that he is related to one of the officers of the said department, namely, Y.N.Sinha. According to the evidence available on the record, the independent witnesses reached the Vigilance Office not along with the trap team but on their own and as such separation of these witnesses from the appellant is admitted. On these factual grounds emerging from the record of the present case a shadow of doubt is created with regard to the recovery of G.C. notes as alleged by the prosecution. Further there may be a possible situation that no witnesses at the scene of occurrence was ready to be a witness of the alleged seizure. As such the two persons (P.Ws. 11 & 12) were subsequently selected and they were commanded to come to the office of the Vigilance and there everything was done and their signatures on the documents(post trap material exhibits etc.) was/were taken.

22) In such a case of trap and recovery of the tendered amount presence of independent witnesses from all respects is the requirement of law as all others involved are personnels of the department. The witnesses so produced as independent witnesses must not only be independent but they must be of such a category that what they depose before the court cannot ordinarily be questioned or doubted. The prosecution must in such matter seriously endeavour to secure really independent and respectable witnesses so that his/their evidence in regard to every step of trap inspire confidence and the court is not

left in any doubt. This is a safeguard for protection of public servant. Reference in this regard may be made to the case of Ragbir singh vs. State of Punjab, 1976 Cri. L.J. 172, .

23) Secondly, in all fairness, the entire process should have been completed at the place of the occurrence itself. Admittedly, the trap party remained at the scene of the occurrence for about 3 hours and incorporated certain facts in the supplementary diary (Ext.A) but neither the seizure was made there and got signed by the witnesses nor post trap chemical test was carried out and memorandum prepared and signed at the place of occurrence. The evidence on record of the independent witnesses (P.W.11 & 12) cannot readily be accepted in view of the fact that they admitted that per chance they were available at the precinct of the Secretariat as they had absolutely no work in the government office (Secretariat) and that they were instructed to come to the Vigilance office and as such they subsequently reached the vigilance office on their own. There is no evidence on record to show that they continued to remain with the trap team and the appellant from the place of occurrence (Secretariat) to the Vigilance Office, where the remaining formalities of chemical test, seizure etc., were carried out by the Vigilance Department and documents prepared and signed. As noticed above, there was no convincing reason on the part of the appellant to demand bribe as he had already dealt with his files earlier. The shadow of doubt created on the prosecution story further turns darker considering the fact that Exts. 11 & 11/1 do indicate that the appellant had, much prior to the date of occurrence, dealt with the files concerning the complainant and the complainant

being a retired officer of the department had full knowledge of the procedures, which are adopted in the government office in order to take a decision by the government. It has therefore been rightly submitted before this court that the demand of illegal gratification and/or undue reward made by the appellant and the agreement on the part of the complainant to give the same does not inspire confidence and/or becomes doubtful.

24) This court while taking the said view has also taken into accounts the submission advanced by the learned counsel for the appellant that P.Ws. 11 & 12 can neither be said to be really independent witnesses or respectable independent witnesses. At least one of them was related to the officer of the department and as such, to some extent, cannot be said to be the independent.

25) In view of the discussions made above and the suspicion that has arisen in the mind of this court, this court is of the view that the prosecution has not been able to prove the charge levelled against the appellant beyond all reasonable shadow of doubt.

26) In the result, this appeal is allowed. The conviction and sentence recorded against the appellant is set aside. He is discharged from the liability of the bail bonds.

(Kishore K. Mandal, J.)

Patna High Court,
Dated, the 25th April, 2008,
NAFR/ (Neyaz)