

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

Cr.A. No.223 of 2001

Reserved on:26.2.2008

Decided on:29.2.2008

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State of H.P.

...Appellant.

**Versus**

Kapil Kumar Dhiman.

...Respondent

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*Coram*

**The Hon'ble Mr. Justice Rajiv Sharma, J.**

*Whether approved for reporting ?<sup>1</sup>. No.*

For the appellant :                Mr.Rajinder Dogra, Addl. Advocate General and  
   Mr. Anil Kumar Jaswal Deputy Advocate General.

For respondent No.2:            Mr. Bimal Gupta, Advocate.

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**Rajiv Sharma, J.**

The respondent was prosecuted under Section 13(2) and 7 of the Prevention of Corruption Act, 1988, in the Court of Special Judge, Chamba, Division Chamba and was acquitted on 21.12.2000. Hence this appeal by the State.

The brief facts which can be gathered from the judgement of the trial Court are that the accused who was posted as drug inspector for Kangra and Chamba districts visited Chamba on 24.4.1995. He visited the shops of different Chemists at Chamba. He demanded bribe from all the chemists but one of the chemist, namely, Bhanu Partap Chowfla refused to oblige him. He reported the matter to the Anti Corruption Police. A trap was laid and the accused was arrested. The police had recovered currency notes worth Rs.2,000/-. The matter was investigated by the police. The challan was put after completion of the investigation. The prosecution examined as many as 24 witnesses to prove its case. The trial Court acquitted the accused on 21.12.2000.

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?* No.

The learned Additional Advocate General had strenuously argued that the prosecution has proved the case against the respondent.

Mr. Bimal Gupta, Advocate appearing on behalf of the respondent had supported the judgment dated 21.12.2000.

I have heard the learned counsel for the parties and have gone through the record of the case.

There are contradictions in the statements made by PW-1 and PW-2 about the timing when they reached the office of Dy.S.P (Anti Corruption). PW-1 Bhanu Partap and PW-2 Balwant Singh had stated that the currency notes worth Rs.2,000/- were put into envelope after being treated with phenolphthalein. However, PW-3 Vimal Kumar, PW-19 Gajraj Singh and PW-23 N.D.Sharma have stated that the notes amounting to Rs.2,000/- were not kept in envelope but were handed over to PW-1 Bhanu Partap. PW-1 Bhanu Partap and PW-2 Balwant Singh had stated that the envelope was kept by Bhanu Partap in his pocket and thereafter it was handed over to the accused in the same condition. The prosecution has not led any evidence suggesting that the envelope was opened by the accused before keeping it in his pent. If the envelope has been kept by the accused in his pocket the colour of water could not turn into pink since he has not touched the currency notes. It has also come in the evidence that the pent of the accused was also washed and it resulted into change of the colour of water. If the accused had kept the envelope in his pent the powder with which the notes were treated could not have transferred into the pink and therefore when it was washed it could not have turned the colour of the water into pink. The colour of the water could only turn into pink if the accused had handled the currency notes treated with phenolphthalein. It has come in the evidence that the accused had demanded the bribe in presence of the peon. The peon was not examined by the prosecution. He was very material witness and no reason has been assigned by the prosecution why he was not cited in the list of witnesses nor examined by the prosecution.

Similarly, there is evidence on record suggesting that the accused had collected the samples of the drugs from the shop of the complainant. If the sample had already been collected by the accused there was no occasion for him to demand the bribe. It appears that the entire case has been planted on the accused and the prosecution has failed to prove its case against him. Cumulatively, it is held that the prosecution could not prove the seizure of the notes amounting to Rs.2,000/-. The prosecution has withheld the material witness, i.e. Peon of the accused. The accused had already taken the samples of the drugs from the shop of the complainant thus there was no occasion for the accused to ask for the bribe.

In view of the observations made hereinabove, this Court will not interfere with the well reasoned judgment of the learned Special Judge, Chamba, dated 21.12.2000.

The result of the above discussion is that there is no merit in the appeal and the same is dismissed. The bail bonds furnished by the accused is discharged.

February 29, 2008  
\*TM\*

**( Rajiv Sharma)**  
Judge