

CF0000057391

IN THE HIGH COURT OF MADHYAPRADESH AT JABALPUR
CRIMINAL APPEAL No. 90

364/90

APPELLANT/ACCUSED

1 Ram Raja Kanoje / (Kannoje)
son of Govind Ram Kannoje,
aged 45 years, Senior
Auditor (under suspension),
resident of Purani Basti,
Raipur.

Vs

RESPONDENT. The State of Madhya Pradesh through
Special Police Estt, Lokayukt Kary, Raipur.

APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE



AFR 24

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Criminal Appeal No. 364/1990

APPELLANT

Ram Raja Kamoje (Kannoje)

VERSUS

RESPONDENT

State of Madhya Pradesh

Post for pronouncement of judgment on 12-5-2010

Sd/-
Pritinker Diwaker
Judge



APR 1990

HIGH COURT OF CHHATTISGARH AT BILASPUR

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RESPONDENT

State of Madhya Pradesh

Shri D.N. Prajapati counsel for the appellant.

Shri Pankaj Shrivastava PL for respondent/State.

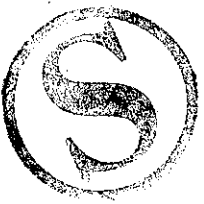
**CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE.**

J U D G M E N T

(12.05.2010)

This appeal is directed against the judgment and order dated 20.3.1990 passed by Special Judge, Raipur, in Special Case No. 2/1986 convicting the accused/appellant for the offences punishable under Sections 5 (1) (d) and 5 (2) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for one year with fine of Rs. 500 u/s 5 (1) (d) and 5 (2) of the Prevention of Corruption Act and rigorous imprisonment for six months u/s 161 of the Indian Penal Code, plus default stipulations.

2. Case of the prosecution in brief is that on 4.6.1984 the accused/appellant was working as senior auditor in Ravi Shankar University, Raipur. Complainant namely Vijay Kumar Vahiti (PW-1) was working as Assistant Professor (Junior) in the said University. It is alleged that on 14.11.1983 the complainant had gone to Varanasi for a period of one year to take higher education. However, after about six months he came back to the said University at Raipur on 14.5.1984 to complete the formalities regarding the Choudhary Pay Scale. Further case of the prosecution is that the complainant had requested one Mayaram Sapha (PW-10) who was working as Lower Division Clerk for the preparation of arrears bills and the bill Ex. P-6 for Rs. 450.10 and Ex. P-7 for Rs. 2171.20 were prepared. These bills were sent by Mayaram Sapha (PW-10) for approval to Assistant Deputy Secretary (Defence) namely S.K. Shukla (PW-8) who in turn



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forwarded the same to the accused/appellant to pass the same for payment. At the relevant time, accused/appellant being the senior auditor was competent to do so. As per the procedure the bills once approved and passed by the senior auditor could not be cancelled or interfered with by any other officer except by that very person. The bills could be cancelled or modified by the said officer only. Case of the prosecution is that though vide bills Ex. P-6 and P-7 for the particular amount were passed for payment by the authorities but the said amount was not as per the full billed amount for which the complainant was entitled. As due payment was not made to the complainant, he again approached the appellant but at this time the accused/appellant demanded Rs. 50 from him to pass the bill after canceling the earlier bills Ex. P-6 and Ex. P-7. The complainant was ready to pay the said amount of Rs. 50 as demanded by the accused/appellant and therefore, he cancelled the bills Ex. P-6 and P-7 and directed the concerned clerk to prepare the fresh bills. Thereafter, fresh bills Ex. P-3 and P-4 dated 24.5.1984 were prepared by Maya Ram Sapha (PW-10) and then as per the prescribed procedure they were processed by the department. As the complainant was not inclined to give Rs. 50 to the accused/appellant, on 4.6.1984 he made a written complaint to the Superintendent of Police, (SPE), Raipur and when the said complaint was made, Phiranta Ram (PW-9) was also present. After receiving the said written complaint S.P. (Lokayukta) authorized the Dy. S.P. to take further action thereon. Subsequently, Dy. S.P. (Lokayukta) directed one B.D. Dhananjay (PW-12) -Inspector, Special Police Establishment, Raipur to proceed further. Pre trap Panchnama Ex. P-2 was prepared on 4.6.1984 and M.V. Pandey (PW-6) and one K.K. Upadhyaya - Area Organisers, Tribal Welfare Department were called by the department. Written complaint Ex. P-1 was shown to them and the trap party was constituted. Test was demonstrated by applying phenolphthalein powder on five currency notes of 10 denomination which were given by the complainant and then the trap party went to the office of the accused/appellant at about 3 p.m. Complainant (PW-1) and Phiranta Ram (PW-9) entered the office of the accused/appellant and when the complainant was



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giving the bribe amount to the accused/appellant, he had asked him to give the same outside the office and that the said amount of Rs. 50 was handed over by him and the same was kept by the accused/appellant in the right pocket of his shirt. Thereafter, the accused/appellant again went inside the office and passed one of the bills Ex. P-3 by putting the seal and signature thereon. However, when he had put his seal on the other bill Ex. P-4, the trap party reached there after receiving the signal from Phiranta Ram (PW-9) and seized the money from the pocket of his shirt worn by the accused/appellant vide Ex. P-15. Phenolphthalein test was conducted which proved positive vide FSL report Ex. P-19. After recording Dehati Nalisi Ex. P-20, the matter was forwarded to Head Office at Bhopal for registration of the offence. After obtaining sanction order Ex. P-22 and completion of all other formalities charge sheet was filed on 13.6.1986.

3. So as to hold the accused/appellant guilty, prosecution has examined 13 witnesses in support of its case. Statement of the accused/appellant was also recorded under section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties the trial Court has convicted and sentenced the accused/appellant as mentioned above.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. Counsel for the appellant submits that the appellant had never demanded any bribe as has been alleged by the complainant in this case. He submits that two bills i.e. Ex. P-6 and Ex. P-7 submitted by the complainant were already cleared by the accused/appellant on 21.5.1984 i.e. much prior to the date of trap i.e. 4.6.1984. He submits that the present is an unfortunate case where as the complainant could not get his full amount, he had blamed the accused/appellant and then after cooking up a false story the trap was conducted. He submits that the investigation has been done by



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Inspector whereas as per the provisions of Section 5 (1)(d) of Prevention of Corruption Act, 1947, the same ought to have been done by the officer not below the rank of Dy. S.P. Counsel for the appellant has however failed to point out as to what prejudice has been caused to the appellant if the investigation has been done by the Inspector. In support of his submission, reliance is placed on a decision of the Supreme Court in the matter of State of Haryana and others v. Ch. Bhajan Lal and others reported in 1992 Cri.L.J. 527. He further submits that the prosecution has failed to prove the fact that any bribe amount was ever demanded by the accused/appellant and as by Ex. P-6 and P-7 the bills were already prepared and sanctioned, there was no occasion for the appellant to raise any demand. He placed reliance on the decision of the Supreme Court in the matter of Ganapathi Sanya Naik v. State of Karnataka reported in AIR 2007 SC 3213. He also placed reliance on the decision of Madhya Pradesh High Court in the matter of K. Sunder Raj v. State of M.P. reported in 2006 (4) MPHT 349. He submits that the amount of bribe was forcibly given by the complainant and even when the appellant had refused to accept the same which is clear from the statement of Suresh Kumar Chandrakar (PW-2). He submits that the evidence as adduced by the prosecution does not establish the case against the accused/appellant and there are material contradictions and omissions in the statements of the witnesses. He referred to the evidence of Ishwarlal (PW-3), Dwarika Prasad (PW-4), P.G. Shrotri (PW-5), Phiranta Ram (PW-9) and Maya Ram Sapha (PW-10). Lastly, it has been argued by the counsel for the appellant that for the small amount of Rs. 50, the accused/appellant has already suffered a lot and that he is out of employment since 1984 i.e. more than 26 years and therefore the punishment may be held to be sufficient and accordingly he may be acquitted of the charges levelled against him.

7. On the other hand counsel for the respondent/State supports the judgment and submits that even if the investigation has not been done by the Dy. S.P., the trial itself will not vitiate unless the



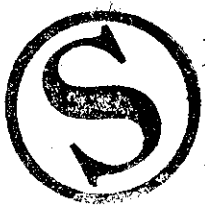
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accused/appellant points out as to what prejudice is caused to him. He submits that when no miscarriage of justice is shown to have been done to him on account of the investigation done by the Inspector, the accused/appellant cannot derive any benefit and the same is merely an irregularity. He submits that the investigation was done in a very fair manner and that too after giving full opportunity to the accused/appellant the *challan* was filed and therefore it cannot be said that any miscarriage of justice has been caused to him or that he has been deprived of any legitimate right. Counsel for the respondent/State however admits that the bills Ex. P-6 and P-7 were sanctioned by all the competent authorities including the present appellant but the case of the respondent/State is that the bill Ex. P-7 was not sanctioned for the full amount as was claimed by the complainant and as against the actual claimed bill of Rs. 2170.20 only the amount of Rs. 1178.90 was sanctioned, the complainant again approached the accused/appellant and for sanctioning the full amount the accused/appellant had demanded Rs. 50 from him. He submits that when the complainant had agreed to give the bribe amount of Rs. 50, accused/appellant had cancelled the earlier bills prepared by him vide Ex. P-6 and P-7 and then again after following the due procedure he prepared the bills Ex. P-3 and P-4. However, the complainant was not willing to pay the amount of bribe and therefore the trap was successfully laid on 4.6.1984. He submits that the demand has been duly proved on the basis of the statement of the complainant (PW-1) and Phiranta Ram (PW-9) who had accompanied the complainant while lodging the written complaint. He submits that so far as acceptance of the amount is concerned, the same has been duly supported by the prosecution which is evident from the statements of Vijay Kumar Vahiti (PW-1), Suresh Kumar Chandrakar (PW-2), M.V. Pandey (PW-6), Manikrao (PW-7), Phiranta Ram (PW-9) and B.D. Dhananjay (PW-12). The same has also been supported by Ex. P-15 by which the currency notes were seized from the accused/appellant and the numbers of the same were tallying with those which were given by the complainant at the time of preparation of pre trap panchnama Ex. P-2. FSL report (Ex. P-9) is also positive. Counsel for the respondent/State submits that

once the amount has been accepted by the accused/appellant then in view of Section 4 of the Prevention of Corruption Act, 1947 the presumption goes against the accused/appellant unless the same is rebutted by him.

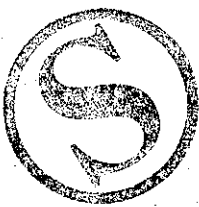
8. Undisputed facts of the case are that at the relevant time the complainant namely Vijay Kumar Vahiti (PW-1) was working as Assistant Professor (Junior) in Ravi Shankar University, Raipur whereas the accused/appellant was working as senior auditor in the said University. According to the complainant, he had gone to Banaras for higher studies where he remained from November 1983 to October 1984. In December 1983 when he had come down to Raipur in connection with some personal work, he came to know that he was required to fill up the form in respect of recommendations of Choudhary Pay Commission. Since certain arrears were to be paid to him, he approached the Audit Fund Section of the University and got his salary fixed as per the procedure. He also gave the relevant papers to Maya Ram Sapha (PW-10) for preparation of bill of arrears. In the Audit Fund Section the complainant met the accused/appellant who at the relevant time was posted there as senior auditor who informed him that the bill regarding arrears was prepared for the excessive amount and that if he would pay Rs. 50 to him as bribe, he would pass the bill as it is even for the excessive amount or else he would deduct the amount and pass the bill as per entitlement. On this, the complainant told the accused/appellant that he would not accept even a single penny in excess and therefore the bills should be prepared according to his entitlement and the excess amount if any may be deducted. When the bills again went to the accused/appellant, on an enquiry being made by the complainant, he told him that unless he would pay Rs. 50, the bill would not be passed. Thereafter, this witness went to the office of S.P. (Lokayukta) and then after completing the legal formalities, the trap was laid. In cross examination, the accused/appellant could not point out anything special which could be of any help to him. Statement of this witness appears to be fully reliable and there is no infirmity in the same on the basis of which it could be said that he



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has made a false allegation against the accused/appellant. Suresh Kumar Chandrakar (PW-2) who at the relevant time was working as Assistant Auditor in the University, has also supported the case of the prosecution stating that accused/appellant was trapped. In cross-examination also, this witness has remained firm to the statement made by him in the examination in chief and has not stated anything new which could be of any help to the accused/appellant. Dwarika Prasad (PW-4), the Patwari is the witness who had prepared spot map Ex. P-11. P. G. Shrotri (PW-5) who at the relevant time was working as Deputy Director had given the information regarding audit. This witness has also supported the case of the prosecution. M. V. Pandey (PW-6) who at the relevant time was working as Area Organiser in the office of Adim Jati Kalyan Vibhag, the independent witness has also supported the case of the prosecution categorically stating that he was called by the police, the complaint was made in his presence, it was read over to him, pre trap panchnama was prepared, phenolphthalein power was applied on the currency note and then the trap party proceeded to the spot and successfully laid the trap. This witness has also supported all the formalities completed by the trap party after conducting the trap. In cross-examination also, this witness has remained firm to the statement made by him in the examination-in-chief and has not stated anything new which could be of any help to the accused/appellant. Manik Rao (PW -7) who had prepared the Sodium Carbonate solution and after applying phenolphthalein powder on a piece of paper had dipped in the same, which had turned pink in colour. Demonstration of the test was also made by him. S. K. Shukla (PW-8) who was working in the University has described the entire procedure to be followed in such cases. He has also stated that after canceling the old bills, new bills were prepared by the accused appellant. While describing the entire procedure this witness has stated that how the bills were routed in the office. In cross examination also this witness has remained firm to the statement made by him in the examination in chief and has not stated anything new which could be of any help to the accused/appellant. Phiranta Ram (PW-9), who at the relevant time



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was working as typist has also supported the case of prosecution. Mayaram Sapha (PW-10) who at the relevant time was working as clerk in the university has also supported the case of prosecution and described the entire procedure being followed in the department. Nothing specific has been stated by this witness which in any way could be helpful to the accused/appellant. Ansram Sahu (PW-11) who at the relevant time was working as lower division clerk in the university has also supported the case of prosecution. B. D. Dhananjay (PW-12) is the inspector who had conducted the investigation in the matter has also supported the case of prosecution.

9. I find no substance in the argument of the counsel for the accused/appellant that as the bills Ex. P-6 and P-7 were already sanctioned on 21.05.1984, there was no occasion for the accused/appellant to demand money. Case of the prosecution itself is that the full amount was not given to the complainant and therefore he had again approached the accused/appellant for sanctioning the full amount as mentioned in Ex. P-7 for which he had demanded money and has also cancelled the bills Ex. P-6 and P-7 and prepared the same afresh vide Ex. P-3 and P-4. This witness has stated that while accused/appellant was completing the formalities of these bills, he was trapped. This witness has fully supported the case of prosecution and there is nothing specific on the basis of which it could be said that the accused/appellant has been falsely implicated in this case. There is no force in the argument of the counsel for the accused/appellant that as the investigation has been done by the inspector and not by the Deputy Superintendent of Police, the accused/appellant is entitled to be acquitted.

10. It is settled position of law that if the investigation has been done by the officer below the rank of Deputy Superintendent of Police, the entire trial is not vitiated unless some prejudice or miscarriage of justice is shown to have been caused to the accused/appellant. In the present case the accused/appellant has



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failed to point out as to what prejudice or miscarriage of justice has been caused to him if the investigation has been done by a person in the rank of inspector. In the matter of **State Inspector of Police, Vishakhapatnam vs. Surya Shankaram Karri** reported in **2006 (7) SCC 172** it has been held by the Apex Court as under:

"It is true that only on the basis of the illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation made by PW-41 was not fair."

11. I further find no substance in the argument of the counsel for the appellant that the bribe amount of Rs.50 alleged to have been demanded and accepted by the accused/appellant is meager and that more than 26 years have already passed from the date of incident, therefore he may be acquitted of the charge levelled against him, for the reason that the amount of bribe and how much period has elapsed since the date of incident is not at all material in such cases and once the involvement of the accused/appellant in demanding and accepting the bribe is established, conviction becomes the only need of the hour.

12. Thus, in view of the aforesaid analytical survey of facts and features of the case, the judgment of the trial court being inconsonance with the material available on the record, needs no interference in this appeal. Accordingly the appeal has absolutely no force and therefore the same is liable to be dismissed. It is dismissed as such.

Sd/-
Pritinker Diwaker
Judge