S.K.MISHRA, J.

GCRLA NO. 2 OF 2010 (Decided on 29.07.2011)

STATE OF ORISSA ……Appellant.

.*Vrs.*

DR. BISWANATH HOTA ……...Respondent.

PREVENTION OF CORRUPTION ACT, 1988 (ACT NO. 49 OF 1988) – S.13 (1) (d).

For Appellant - Mr. Subrat Das,
Standing Counsel (Vig.)
For Respondent - M/s. Basudev Pujari, S.K.Pradhan(1)
& B.Jali.

S.K.MISHRA, J. This is an appeal against the judgment of acquittal dated 28.11.2000 rendered by the learned Special Judge (Vigilance), Berhampur in G.R. Case No.2 of 1994 (V), whereby the respondent was acquitted of the charges under Sections 13(1)(d) and 7 of the Prevention of Corruption Act, 1988 (hereinafter referred as the "Act" for brevity).

2. Case of the prosecution, in brief, is that on 04.01.1994, complainant Rabi Moharana went to the City Hospital, Berhampur with his wife Sujata for medical check up as she was feeling pain in her stomach. On instruction of the doctor at the outdoor, the complainant took his wife to the Gynaecology Department of the hospital. Upon examination it is alleged that the respondent, who was then Gynaecology Specialist of that hospital, informed the complainant that the baby inside the womb was already dead. He advised to wash the uterus and demanded a sum of Rs.300/- as bribe. In spite of repeated request, the accused did not listen. Thereafter, on the next day i.e. on 05.01.1994, the complainant met the respondent at his residential office. Then the doctor asked the complainant to come on 06.01.1994 with the cash of Rs.300/- and his wife to the hospital for the purpose of washing. On such allegation, the complainant lodged a written report before the Superintendent of Police (Vigilance). He directed the Inspector of Vigilance, Berhampur to take up investigation and detect the case by laying a trap. Thereafter, the Inspector of Vigilance completed all formalities for a trap and on 06.01.1994, in presence of official witnesses a trap was laid and during such trap, the tainted G.C. notes, smeared with phenolphthalein powder were recovered from the possession of the accused. Thereafter, after further investigation, charge-sheet was submitted against the accused.

3. The accused denied the charges leveled against him. He specifically took the plea that while he was in hospital, someone came and kept some money forcibly in his pocket and while he was protesting to such action of that man, two Vigilance Officers came and recovered money from his possession, though in fact he had never taken up any medical check up of the wife of the complainant nor demanded any bribe from him.

4. In order to establish its case, prosecution examined ten witnesses. P.W. 5-Rabi Maharana is the complainant and P.W. 4-Sujata Kumari Behera is his wife. P.W.6-Debendra Kumar Satpathy, a Junior Clerk and P.W. 7-Prafulla Kumar Behera, a Peon of Settlement Office, Berhampur and P.W. 8-Gopinath Deo, then Asst. Settlement Officer, Berhampur are witnesses in whose presence the trap was laid. P.W. 1-Niranjan Padhy and P.W. 2-Pramoda Kumar Padhy happen to be two employees of the City Hospital, who have been examined as formal witnesses to the seizure of O.P.D. Register of female wing, City Hospital. P.W. 3 is a witness, whose hand-wash was taken prior to and after counting the tainted notes. P.W. 9 is the Scientific Officer, who examined the chemical solution. P.W. 10 is the trap laying officer as well as Investigating Officer of the case.

The defence has not examined any witness on its behalf.

5. After taking into consideration the materials available on record, the trial court found that neither the complainant nor his wife has stated that the respondent has examined P.W. 4 or demanded Rs.300/- towards bribe to wash the uterus of P.W. 4. Rather, they have categorically stated that the accused had never demanded money from them. The learned trial judge further took into consideration the fact that P.W. 7 has stated that the complainant went to the Doctor and talked with him and in spite of denial of that doctor, the complainant kept the tainted G.C. notes in the pocket of that doctor. Thus, the learned trial judge came to the conclusion that mere recovery of the tainted G.C. notes from the possession of the respondent and the change in colour in Sodium Carbonate solution to pink will not enhance the case of the prosecution and hence he acquitted the respondent of the charges leveled against him.

6. In assailing the order of acquittal, Mr. Subrat Das, learned Addl. Standing Counsel for the Vigilance Department argued that mere fact that on recovery of the tainted notes from the possession of the respondent shall establish the case of the prosecution. He further argued that when the evidence of the police officer, who laid the trap, was found to be trustworthy, there is no need to seek any corroboration and merely on that score, the judgment impugned is liable to be set aside. In this connection, he relied on the reported case of **Hazari Lal v. The State (Delhi Admn.)**, AIR 1980 SC 873.

7. Learned counsel for the respondent, on the other hand, submitted that mere recovery of the tainted notes from the possession of the respondent in the absence of any evidence regarding demand of bribe is not sufficient to convict the accused. It is further argued that unless there are good and sufficiently cogent reasons, the appellate court in appeal against acquittal should not disturb the findings recorded by the learned trial Judge. In this case, it is submitted that there are no substantial and compelling ground or good and sufficiently cogent reason for disturbing the finding of facts. Hence, it is submitted by the learned counsel for the respondent that the appeal should be dismissed.

8. It is urged at the Bar that P.W. 5 i.e. the complainant, his wife P.W. 4 and over-hearing witness P.W. 7 have not supported the prosecution case.

They have been cross-examined by the prosecution after taking leave of the court under section 154 of the Indian Evidence Act, 1872, hence the court considers it necessary to refer to certain portion of evidence of theses witnesses for coming to a just and proper conclusion.

9. P.W. 5 Rabi Maharana, the complainant himself, has stated in his examination-in-chief that when he first complained regarding the demand of bribe, he did not know the name of the respondent and, therefore, he came and enquired from a Peon, who told that the respondent was on duty during day time. After ascertaining the name of the doctor, he went to the Vigilance Office. Then the Vigilance staff took his signature on a plain paper and asked him to leave. This witness was cross-examined by the prosecution and the contents of the F.I.R. lodged by him as well as the statement recorded under section 161 of the Criminal Procedure Code, 1973 were confronted to him. It is no doubt clear that the prosecution has brought out in such cross-examination that this witness has in fact lodged an F.I.R. and has been examined by the Investigating Officer and has implicated the present respondent to have demanded and received bribe of Rs.300/-, but such evidence is not substantial evidence and on the basis of such evidence, conviction cannot be recorded. Furthermore, it is found from the cross-examination of this witness that he has categorically stated that the respondent was not present among the three doctors, who were present in that room when he took his wife to the City Hospital for the first time. He again states that the accused has never demanded any money from him to wash stomach of his wife. He has further stated on oath that he was insisted by the Vigilance Inspector to put the tainted currency notes inside the chest pocket of the doctor, who demanded money. He further adds that after his arrival at City Hospital, the doctor who demanded the money from him was not found. Thereafter, one of the members of the Vigilance staff asked him to keep the tainted currency notes inside the chest pocket of the accused, when he informed the Vigilance staff that this accused had not demanded money, still then the vigilance Inspector insisted to put the tainted currency notes in the chest pocket of the accused and accordingly he did so.

10. P.W. 7 the over-hearing witness has stated that after their arrival at the City Hospital, the doctor was not found in his seat. After sometime, the doctor was found coming from the operation theatre. At that time, the complainant went to the doctor, talked with him and in spite of denial of the doctor, the complainant kept money (G.C. notes) inside the chest pocket of the doctor. Thus, complainant and the most important witnesses, namely the over-hearing witness have not stated regarding the demand of bribe by the respondent, which is a vital ingredient in a case under section 7 of the Act. In a recent decision, the Supreme Court in **State of Kerala and another v. C. P. Rao,** (2011) 49 OCR 601 has quoted the observation made by the Hon'ble Supreme Court in the case of **C.M. Girish Babu v. CBI, Cochin, High Court of Kerala** reported in 2009(3) SCC 779 and **Suraj Mal v. State (Delhi Admn.)** reported in 1979 (4) SCC 725 and held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained. The observation made by the Supreme Court in the

aforesaid cases is squarely applicable to the case at hand and, therefore, there appears to be no plausible reason for disturbing the findings recorded by the learned Special Judge, Vigilance in this case.

11. Before parting with the case, it is apt to take note of the principles guiding the appeal against acquittal. As back as in 1934, in **Sheo Swarup and others v. King Emperor,** AIR 1934 PC 227, the Privy Council has laid down the principle guiding the appeal against acquittal. It has been laid down in very clear terms that the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial court as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court to disturb a finding of fact arrived at by a Judge who had advantage of seeing the witnesses. This view appears to be still holding force as in **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Supreme Court has laid down the following principles:

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly,* the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

12. Thus, on the basis of the aforesaid discussion, this Court comes to the conclusion that there are no substantial and compelling reasons to come to the conclusion that the findings arrived at by the learned Special Judge were in any manner perverse or distorted On the contrary, this Court comes to the conclusion that the trial Judge seems to have an perspicacious view of the matter and has come to a just and proper

conclusion. Therefore, there is no need to interfere with the findings recorded by the trial court. Accordingly, it is held that the appeal is without merit and the same is dismissed.

Appeal dismissed.