

HIGH COURT OF MADHYA PRADESH : JABALPUR

DB : Hon. Rakesh Saxena & Hon. M.A. Siddiqui, JJ.
Criminal Appeal No.1508/2000

Babulal son of late Jugal Kishore Khare,
Aged 44 years, Accountant,
At present, Office of Chief Medical Officer,
Chhatarpur

Vs.

The State of Madhya Pradesh

Shri S.C.Datt, Senior Advocate with Shri Siddharth Datt,
Adv. for the appellant.

Shri Aditya Adhikari, Special Public Prosecutor for SPE
Lokayukta.

JUDGMENT RESERVED ON 18/08/2011
JUDGMENT DELIVERED ON 30/08/2011

J U D G M E N T

As Per : M.A. Siddiqui, J.

This appeal has been filed by the appellant against the judgment dated 19.05.2000 delivered by Ist Addl. Sessions Judge and Special Judge, Prevention of Corruption Act, 1988, Chhatarpur in Special Case No. 6/98 whereby the appellant has been convicted for alleged offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and sentenced to R.I. for two years and fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for six months.

2. In short, the facts of the case are that appellant was posted as Accountant in Primary Health Centre (hereinafter referred to as "PHC"), Rajnagar, District-Chhatarpur. At that time, Dr.

Ashok Tiwari (PW.1) (for short "complainant") was working as Assistant Civil Surgeon in Civil Dispensary, Chandranagar in the year 1996. Dispensary of complainant was under the control of PHC, Rajnagar. As arrears of pay near about Rs.10,000/- were to be paid to complainant in respect of which the bills were to be prepared by the Accountant, appellant asked 25% of the arrears, about Rs.2,000/-, in bribe. Complainant was asked to come with the money on 26.10.96 to which complainant asked that why this amount was being demanded, appellant said that he had incurred the expenditure in the treasury for getting the bills passed by the treasury so he is demanding Rs.2,000/- to which complainant said that some concession may be given. Then appellant told complainant to give Rs.1,000/- in cash and remaining amount in form of contingency bill for some family planning camp, etc. So, it was asked that Rs.1,000/- be given in bribe by the complainant on 26.10.96. As complainant did not want to give the bribe so he approached office of SPE, Lokayukta, Sagar on 25.10.96 and submitted complaint Ex.P/1. For verification, complainant was asked to record the conversation on tape recorder, the conversation was got recorded on tape recorder on the same day, and complainant handed over the tape recorder along with the cassette in the office of SPE, Lokayukta, Sagar for which *panchnama* Ex.P/3 was prepared by A.K.Dubey (PW.5) Inspector, Lokayukta Police, Sagar. After being satisfied, trap was arranged by P.K. Guru, Incharge, Deputy Supdt. of Police, Lokayukta on the basis of complaint Ex.P/1 given by complainant and A.K.Dubey (PW.5) was ordered to arrange for a trap.

3. A.K. Dubey (PW.5) registered crime under Section 7 of the Act vide Ex.P/11 at Sagar on the basis of transcript version on tape recorder Ex.P/12. P.S.Kirar (PW.2) Assistant Soil Conservation Officer, Sagar and A.K.Jain (PW.3) Assistant Engineer, Ph.E., Sagar were called by SPE, Lokayukta on 25.10.96. In the evening they reached the office of SPE, Lokayukta, Sagar. They were introduced and apprised with the complainant and they also heard conversation recorded on tape recorder by the complainant. Then complainant tendered 10 notes of Rs.100/-each, numbers of which were noted down by P.S.Kirar (PW.2). On these currency notes, phenolphthalein powder was applied through constable Rajesh Sonkar (PW.4). Tainted notes were kept in front pocket of shirt of complainant and he was asked not to touch them before giving the same to the appellant. Hands of Rajesh Sonkar who applied phenolphthalein powder were washed with the sodium carbonate, solution turned into pink which was seized in bottle. Rajesh Sonkar was not made member of the trap party. Trap party consisting of A.K.Dubey (PW.5), complainant, P.S.Kirar (PW.2), A.K. Jain (PW.3), Shivshankar Dubey (PW.6) , Rajendra Singh (PW.7), L.N.Yadav, Sub-Inspector headed by Deputy Supdt. of Police Surya started in two jeeps from Sagar to Rajnagar, District- Chhatarpur late in the night on 25.10.96. They halted for few hours at Bada Malhara and early in the morning at 9 AM on 26.10.96, they started towards Rajnagar and reached there in the noon. Jeeps were stopped at some distance from PHC and complainant was sent to contact appellant and shadow witnesses P.S.Kirar (PW.2) and

Constables Shivshankar Dubey (PW.6) and Rajendra Singh (PW.7) were sent just after him. Within few minutes, they came back and informed that appellant was not available, he will come at 4 PM in the evening. As nearabout three hours were there so trap party visited Khajuraho, a famous place which is nearabout 5-6 kms. away from Rajnagar. In the evening at 4 PM trap party came back to Rajnagar hospital and asked complainant to go to appellant, and after him P.S.Kirar, Rajendra Singh and Shivshankar were sent by leader of the trap party, witnesses Jain and Yadav were also sent. A.K.Dubey (PW.5) also reached to the verandah in front of room of appellant. Complainant Dr. Ashok Tiwari (PW.1) reached in the room of appellant and sat on a chair. Then, complainant asked for his payment of arrears to which appellant asked him whether complainant brought Rs.1,000/- for him, complainant took out Rs.1,000/- from his pocket of shirt and gave the same to the appellant, appellant after taking the notes counted them and put it into the drawer of the table. The complainant was asked to do the signature on the payment register etc., after putting the signature, complainant gave the instructed signal, on which trap party went inside the room and caught hold the appellant and recovered the tainted notes from the drawer of table of appellant. Hands of appellant, P.S. Kirar who took out the notes from the drawer and hands of complainant were washed by sodium carbonate, the solution turned into pink, notes were also washed, the solution became pink. Solutions were seized and sealed in bottles and notes were seized vide Ex.P/6. Registers and pass book of PHC were also seized vide

Ex.P/10. Spot map Ex.P/13 was prepared. Appellant was arrested vide Ex.P/8 and released on bail. Inventory vide Ex.P/7 was made. Memorandum of trap proceedings Ex. P/5 was made by A.K.Dubey (PW.5). From the treasury of Rajnagar, arrears documents vide Ex.P/14 and P/15 were seized and they were given on *Supurdgi*. During investigation, the seized solutions and samples of powder were sent for their chemical examination to FSL, Sagar . Whole proceeding was recorded and crime was registered vide Ex.P/11 by A.K.Dubey (PW.5) and it was sent for registration to SPE, Lokayukta, Bhopal where it was registered vide Ex.P/17.

4. After usual investigation and after taking valid sanction Ex.P/18 to prosecute the appellant, charge sheet was filed in the Court of Special Judge, Chhatarpur.

5. On charges being framed, appellant pleaded false implication. His defence, as per his statement under Section 313 of Cr.P.C., was that complainant who was a Doctor wanted that appellant should help him in the wrong deeds and on being refused, he was annoyed with the appellant, so he falsely implicated the appellant in this case.

6. Prosecution examined as far as 7 witnesses to substantiate its case viz., Dr.Ashok Tiwari (PW.1), , P.S.Kirar (PW.2), A.K. Jain (PW.3), Rajesh Sonkar (PW.4), A.K.Dubey (PW.5), Shiv Shankar Dubey (PW.6) and Rajendra Singh (PW.7).

7. Appellant, to substantiate his defence, produced some photo copies of complaints by him against the complainant but he did not examine any witness in his support.

8. We have heard learned counsel for the parties.

9. It was no longer disputed that at the relevant time, appellant was working as Accountant in PHC, Rajnagar as he has admitted in his examination under Section 313 of Cr.P.C. As he was an Accountant of a Government Department, so he was a public servant within the meaning of the Act.

10. As far as sanction Ex.P/18 against the appellant is concerned, A.K.Dubey (PW.5) Inspector of Lokayukta has proved that valid sanction has been accorded vide Ex.P/18. Though, none was examined to prove the sanction, but it has not been challenged. So, it cannot be said that no valid sanction has been accorded. Even otherwise, as per provisions of Section 19 of the Act, no conviction, etc. can be challenged even in absence of sanction without being shown the prejudice caused. So valid sanction vide Ex.P/18 has been granted.

11. Complainant Dr.Ashok Tiwari (PW.1) stated that when he was posted as Assistant Surgeon at PHC, Chandranagar, at that time, appellant Babulal Khare was posted as Accountant at Rajnagar. As arrears of pay nearabout Rs.10,000/- was pending for preparation of bill, appellant demanded Rs.2,000/- as bribe on the pretext that he had incurred this amount in passing the bills from treasury and ultimately he became ready to accept Rs.1,000/- in cash and remaining amount by adjustment in contingency bills of some camps. Complainant further stated that he was not willing to give the money in bribe so he approached office of SPE, Lokayukta, Sagar on 24.10.96 and made oral complaint on which it was asked that whether demand was there, conversation on tape recorder with the help of one constable was asked to be done. On this, this witness

with the constable came back to Rajnagar and recorded the conversation on tape recorder in the morning of 25.10.96, and handed over the cassette of conversation together with the tape recorder to the officials of Lokayukta. After hearing the conversation and on being satisfied, he was asked to give the complaint in writing so he gave complaint Ex.P/1 to the Office of SPE, Lokayukta, Sagar. Thereafter two officers were called by the Lokayukta police, Sagar and then this witness tendered Rs.1,000/- (10 notes of Rs.100/-each) on which phenolphthalein powder was applied and numbers of notes were noted and the same were put in his pocket of shirt with the instruction not to touch them before giving the same to the appellant. Panchnama Ex.P/4 was prepared. At 10 PM on the same day i.e. on 25.10.96, complainant along with officers of trap party of SPE, Lokayukta, total 8-9 persons started in two jeeps and halted in the night at Bada Malhara town, and then on 26.10.96 at about 12-1 PM they reached Rajnagar. The complainant enquired about appellant Babulal, it was revealed that appellant was not available and he will be available in the evening, so with the trap party, this witness (complainant) visited Khajuraho up to 4 PM. At 4 PM the witness came back with the trap party and reached in the office of appellant where he was found in his office. The tainted money was handed over to the appellant, who after counting the same kept it in the drawer of table. Complainant further stated that before giving tainted amount to appellant he signed on the bills and after giving tainted money, he came out of the office and gave the instructed signal, on which trap party came into the office and appellant was brought

outside the office , at that time two constables of trap party held his both hands. The hands of appellant were washed with the solution of sodium carbonate, it turned pink, the same was seized and sealed in a bottle. Officers of the trap party took out the tainted money from the drawer of table of accused and the numbers of the notes were tallied, the tainted notes were seized vide Ex.P/6 and *panchnama* Ex.P/5 of the proceedings was made.

12. Rajesh Sonkar (PW.4) Constable, Lokayukta, Sagar stated that he applied the phenolphthalein powder on the currency notes of Rs.1,000/- (10 notes of Rs.100/-each) and the same were kept in the pocket of shirt of complainant Dr.Tiwari and he was asked not to touch them. Solution of sodium carbonate was made in which hands of this witness were washed, solution turned into pink which was seized and sealed in a bottle.

13. P.S.Kirar (PW.2) Assistant Soil Conservation Officer and A.K. Jain (PW.3) Assistant Engineer, Ph.E. supported the version of complainant that they were called in the office of SPE, Lokayukta, Sagar and they enquired the matter from complainant Dr. Tiwari. Trap was arranged before them and they had gone along with the complainant and trap party to Rajnagar in the night of 25.10.96. On 26.10.96, the tainted money was recovered from the drawer of table of appellant from his office and these notes were asked to be taken out by P.S.Kirar who took out the notes from the drawer of table of appellant and when his hands were washed by solution, it turned pink. A.K. Jain (PW.3) also stated that notes were recovered from the drawer of appellant ,the same were tallied

and seized vide Ex.P/6. Hands of appellant and P.S.Kirar were washed with the solution, it turned pink. Though it has been suggested in their cross-examination that they were the pet witnesses, but A.K. Jain (PW.3) stated that, for the first time, he accompanied the trap party, though P.S.Kirar (PW.2) admitted in his cross-examination vide para 18 that in three cases he was a witness.

14. Learned counsel for appellant further submitted that P.S.Kirar (PW.2) is a pet witness, hence, his evidence is not reliable. He placed reliance on decision rendered by the Apex Court in **G.V.Nanjundiah vs. State (Delhi Administration) AIR 1987 SC 2402** and **Darshan Lal vs. The Delhi Administration (1974) 3 SCC 595** and submitted that learned trial Court has committed error in accepting his evidence.

15. Learned counsel for State supported the impugned judgment rendered by the trial Court and submitted that by becoming a witness in three cases, a person could not be said to be a pet witness. Even otherwise, A.K. Jain (PW.3) has categorically stated that, for the first time, he has become a witness. Counsel submitted that the version of complainant was further corroborated by companions of trap party A.K.Dubey (PW.5), Shivshankar Dubey (PW.6) and Rajendra Singh (PW.7) who categorically stated that complainant handed over the tainted money to appellant who kept the same in the drawer of his table and same were recovered, the numbers of the notes were tallied , hands were washed and solution turned pink.

16. Learned counsel for appellant submitted that no demand has been established by the prosecution and complainant was

not reliable, he comes under the category of “accomplice”. Learned counsel for State submitted that complainant cannot be termed to be “accomplice” as has been held by the Apex Court in **Maha Singh vs. State (Delhi Administration) (1976) 1 SCC 644** that in such cases complainant is an unwilling or forged bribe-giver and is not *particeps criminis*, corroboration may yet to be sought. In **M.O.Shamsudhin vs. State of Kerala (1995) 3 SCC 351** the Apex Court held that evidence of bribe-giver cannot be termed as “accomplice” though the evidence of such person requires to be scrutinized carefully.

17. Learned counsel for State submitted that as far as demand is concerned, the complainant’s version was supported by categorical statement of A.K.Dubey (PW.5) who stated in his examination in para 13 that appellant asked from Dr.Tiwari had he brought the money, then Dr.Tiwari said that he brought the money. Thereafter the complainant handed over the tainted money of Rs.1,000/- from his pocket of shirt , and appellant after counting the same, kept it in the drawer of his table. Rajendra Singh (PW.7) Head Constable in para 3 of his examination stated that Dr. Tiwari met with appellant, and appellant after taking the money from him, kept it in the drawer of his table. Tainted notes were seized vide Ex.P/6, the same were tallied and there numbers were found the same.

18. Learned counsel for State further placed reliance on **Hazari Lal vs. State (Delhi Administration) (1980) 2 SCC 390** wherein it has been held that in the facts and circumstances of a particular case, Court may accept the evidence of a police officer who laid the trap without any

corroboration and there is no rule that the version of police officer cannot be acted upon without corroboration and passing of money to the possession of accused can be proved by direct as well as circumstantial evidence. The circumstances leading to the only inference of acceptance of money by the accused. Presumption under Section 114 of Evidence Act and Section 4(1) of Prevention of Corruption Act,1947 also raised against the accused.

19. Learned counsel for State supported the impugned judgment rendered by learned trial Court and submitted that A.K. Dubey (PW.5) has categorically stated that trap proceedings were in accordance with the norms. In support , he had seized the file concerning to arrears and cash book vide Ex.P/10, he also seized on 23.12.96 the arrears forms etc. from Rajnagar treasury vide Ex.P/14 and P/15 which also support the version of complainant that arrears were paid in which bribe was taken. Counsel further submitted that A.K.Dubey (PW.5) further stated he sent the seized solution of handwash of appellant, complainant and P.S.Kirar (PW.2) to FSL, Sagar and FSL report Ex.P/16 is positive which has further corroborated the prosecution case. He placed reliance on decision rendered by the Apex Court in **M.W. Mohiuddin vs. State of Maharashtra (1995)3 SCC 567**. in which it has been held that once the accused comes into possession of the tainted money the only inference is that he accepted the same and thus obtained the pecuniary advantage meaning thereby the ingredients for alleged offence punishable under Section 7 and Section 13(1)(d) read with Section 13 (2) of the Prevention of

Corruption Act, 1988 is there. He further placed reliance on decision rendered by the Apex Court in **Ramesh Kumar Gupta v. State of M.P. (1995) 5 SCC 320** in which it has been held that for the evidence of bribe-giver corroboration need not be direct. It can be by way of circumstantial evidence also where tainted money wrapped in a paper found under the mattress of the cot. Bribe giver stating that the accused had asked him to keep the money under the mattress. Phenolphthalein powder test regarding washing of the hands of the accused giving positive result showing that the accused must have handled them at some stage. Fact that the complainant borrowed money for payment indicating that it was not a case of false implication. Held in the circumstances of the case, prosecution has proved its case beyond all reasonable doubt. He further placed reliance of decision rendered by the Apex Court in **State of U.P. vs. Zakaullah (1998) 1 SCC 557** in which it has been held that testimony of bribe giver can not be rejected merely because he is aggrieved by the conduct of the accused. However, his evidence requires scrutiny with great care. Complainant/bribe- giver testimony can not be rejected outright at the most it needs scrutiny with great care.

20. Learned counsel for State placed reliance of decision rendered by the Apex Court in **B. Noha vs. State of Kerala and another (2006)12 SCC 227** wherein it has been held that when it is proved that there was voluntary and conscious acceptance of money by the accused, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and

circumstances obtained in the particular case and appellant accused found guilty of offences punishable under section 7 and 13 (1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988. On facts that accused, a public servant, allegedly demanded and accepted illegal gratification from PW 1. Before the trial Court accused denying the charge leveled against him in a statement made under Section 313 Cr.P.C.. Trial Court finding the evidence of PWs 1 and 2 credible and cogent, held the accused guilty by mainly placing reliance on their evidence. Before High Court the trial Court's judgment was primarily attacked on the ground that PWs 1 and 2 were interested witnesses and their evidence should have not been accepted. It was held that there is no substance that evidence of PW 1 is the evidence of an interested witness. There is no basis for PW 1 to falsely implicate the accused. Evidence on record clearly shows why the illegal gratification was demanded and accepted by the appellant. Evidence of PW 1, thus, does not suffer from any infirmity to warrant interference. Moreover, evidence of PW 2 is also clear, credible and cogent. Conviction was upheld.

21. Learned counsel for State further placed reliance on decision rendered by the Apex Court **in Kanshi Ram vs. State of Punjab (2005) 12 SCC 641** in which it has been held that under section 20 of Prevention of Corruption Act, 1988, where the receipt of money was proved beyond reasonable doubt, no reasonable explanation offered by accused as to how the tainted money came to his possession, it was held that it would be presumed u/s 20 of the Act that the accused accepted the bribe.

On facts, the explanation offered by appellant was not sufficient to rebut the presumption. Conviction and sentence were upheld.

22. In **Krishna Ram vs. State of Rajasthan (2009) 11 SCC 708** it has been held that under Section 20 of the Act presumption has to be drawn where demand of Rs.500/- by Patwari for giving favourable report in regard to allotment of lands on permanent leasehold rights was made and currency notes treated with phenolphthalein powder recovered from pockets of appellant-accused, numbers of the notes recovered matched, stand of appellant that the money was handed over to him by the complainant as loan amount on behalf of DW.1 was found not to be proved. It has been held that once money was recovered from the possession of the appellant, the burden under Section 20 of the Act shifts upon him which he could not discharge, demand of Rs.500/- as bribe money was, thus, held to be conclusively proved.

23. Learned counsel for appellant further submitted that complainant Dr.Ashok Tiwari (PW.1) was a superior officer and appellant was an Accountant and was having no authority to pass the bill. Even as per version of complainant, SPE, Lokayukta, Sagar was surprised to know that bribe was demanded from a Doctor by his sub-ordinate Accountant, as such the prosecution case becomes doubtful.

24. Learned counsel for State submitted that as appellant was not preparing the bill which was his duty and was asking for illegal gratification, then nothing is un-natural. Moreover, it is not necessary that accused should be in a position to do the

favourable act for which he placed reliance on a decision in **Chaturdas Bhagwandas Patel vs. The State of Gujrat (1976) 3 SCC 46** wherein it has been held that it is not necessary that a public servant should, infact, be in a position to do a favourable act.

25. Learned counsel for appellant submitted that while going for search at PHC, Rajnagar, complainant Dr. Ashok Tiwari (PW.1), with the help of peon, planted tainted money in the drawer of table of appellant in absence of appellant at noon, and in the evening with the trap party falsely implicated the appellant by recovering the tainted money from the drawer of table of appellant.

Per contra, learned counsel for State submitted that as per prosecution evidence, complainant did not go alone, he was followed by shadow witnesses and within a few minutes he came back so there was no occasion or opportunity for the complainant to plant the tainted money into the drawer of table, particularly, in the circumstances of the case when complainant had already approached SPE, Lokayukta, Sagar and came with the trap party, there was no necessity or cause to plant the money into the drawer. He further submitted that appellant has not taken this plea in his statement under Section 313 of Cr.P.C. So, the defence of planting money is against the facts and circumstances of the case.

26. Learned counsel for State further submitted that though appellant has taken the plea of false implication, but he has not laid any oral evidence in his support, though he submitted photo

copies of four documents in relation to bad relations between him and complainant, but those cannot be looked into as they have not been proved by leading cogent and reliable evidence, and originals of the same have also not been filed. He further submitted that appellant has not explained how he came in possession of tainted currency notes and he had taken general defence of false implication while there is specific allegation that tainted notes were recovered from the drawer of his table.

27. As per above discussion, presumption under Section 20 of the Act may be very well drawn against the appellant that he demanded and accepted the money as bribe. The evidence of prosecution is crystal clear and cogent, and trial Court has committed no error in convicting the appellant as aforesaid.

28. So far as quantum of punishment is concerned, Apex Court in **Surain Singh v. State of Punjab (2009)4 SCC 331** has held that sentence of 2 years R.I. is too harsh u/s 13(2) of the Prevention of Corruption Act considering the fact that more than 19 years have passed since the occurrence took place in the year 1990, therefore, the sentence needs to be appropriately reduced. The custodial sentence/statutory sentence of one year, which is minimum prescribed, would meet the ends of justice.

29. In the case in hands, appellant was 44 years old at the time of filing of appeal, and since then 11 years have passed. He was an Accountant. In our opinion the sentence of 2 years R.I. is harsh. Looking to the facts and circumstances of the case together with aforesaid citation of the Apex Court, in our opinion, the sentence of 2 years R.I. imposed by the trial Court

needs to be appropriately reduced to the statutory period of one year, which is minimum prescribed, would meet the ends of justice. No interference is called for in respect of sentence of fine with default stipulation.

30. Accordingly, the appeal filed by the appellant is partly allowed. The order of conviction passed against the appellant is maintained. However, the sentence of 2 years R.I. awarded to the appellant is modified to the period of 1 year R.I. which is minimum prescribed. The appellant is on bail. He shall surrender to serve out his remaining sentence.

31. The appeal is partly allowed to the aforesaid extent.

(Rakesh Saksena)

Judge.

(M.A.Siddiqui)

Judge.

Jk.