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INDRA VIJAY ALOK

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1917 of 2008)

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AUGUST 31, 2015

[RANJAN GOGOI AND PRAFULLA C. PANT, JJ.]

C *Prevention of Corruption Act, 1988: ss.7 and 13(1)(d) r/w s.13(2) – Allegation that appellant-Patwari demanded from the complainant bribe for carrying out the mutation in the revenue records – Trial Court found the evidence of complainant (PW-3) and statements of other prosecution witnesses reliable for holding the appellant guilty – Conviction*
D *by trial court upheld by the High Court – On appeal, held: The statement of PW-3 got corroboration by the statement of the superior officer of the appellant's own department – As such courts below committed no error of law in relying on testimony of these witnesses and in convicting the appellant.*

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Dismissing the appeal, the Court

Held: 1. The statement of PW-3 (complainant) gets corroborated by the statement of PW-4 (Deputy Superintendent of Police), as well as by PW-2 Deputy Collector who is superior officer of the appellant's own department. As such the courts below have committed no error of law in relying on the testimony of above three witnesses as trustworthy, against the statement of DW-6, who appears to have been won over by the defence. Merely for the reason that DW-6 has not supported prosecution case, the ring of truth in the prosecution case is not shaken in the present case, particularly, when the statements of remaining witnesses are credible and

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trustworthy. [Para 10] [292-H; 293-A-B]

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2. The Investigating Officer was not examined by the prosecution. This has no legs for the reason that it has come on the record that the Investigating Officer had died when the prosecution evidence was recorded. [Para 11] [293-C]

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3. PW-3 has clearly stated that initial demand of Rs.1900/- was made to his mother, who paid Rs.900/- to the appellant, but when he came back to his village, his mother told him that further Rs.1000/- was required to be arranged. PW-3 further told the court that on this, he himself went to the appellant and requested not to demand further money, but he (appellant) did not relent. The trap was laid, and the amount of Rs.1000/- was given by him to the appellant and recovered from him (appellant). Even otherwise, presumption can be drawn under Section 20 of the Prevention of Corruption Act, 1988, regarding the motive of receiving the gratification unless it is rebutted. In the present case, the presumption does not stand rebutted. [Para 12] [293-E-H; 294-A]

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CRIMINALAPPELLATE JURISDICTION: Criminal Appeal No. 1917 of 2008.

From the Judgment and Order dated 31.08.2007 of the High Court of Judicature Madhya Pradesh at Jabalpur, Gwalior Bench Gwalior in Criminal Appeal No. 102 of 2000.

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Rajendra Sahu, Hema Sahu, C. L. Sahu for the Appellant.

Shreya Bhatnagar, Bansuri Swaraj, C. D. Singh for the Respondent.

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The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against H

- A judgment and order dated 31.8.2007, passed by the High Court of Madhya Pradesh, Jabalpur (Gwalior Bench), whereby said Court has dismissed Criminal Appeal No. 102 of 2000, and affirmed conviction and sentence recorded against accused Indra Vijay Alok under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention and Corruption Act, 1988 by the Special Judge, Datia, in Special Case No. 1 of 1992.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Prosecution story, in brief, is that a piece of land in Badoni Khurd was in the name of one Badri, younger brother of PW-3 Ram Singh (complainant). Appellant Indra Vijay Alok was the Patwari of Halka area during the relevant period, i.e. in 1987. After death of Badri, complainant and his mother Bhagobai sought mutation of their names in the revenue record. When Bhagobai, mother of the complainant, met the appellant in this connection, he demanded Rs. 1900/- out of which she paid Rs. 900/-. When Complainant (PW-3) came to his village, his mother told him about the demand made by the appellant. On this, on 18.05.1987 he (PW-3) himself met the appellant, who clearly told him that unless further Rs.1000/- is paid to him, the mutation would not be done. This compelled PW-3 Ram Singh (complainant) to make a complaint (Ext.P-3) on 17.6.1987 to Superintendent of Police (Vigilance), Gwalior. A trap was laid, headed by PW-4 B.L. Vashist (Deputy Superintendent of Police) in which PW-2 Ashok Bhargava (Deputy Collector) and one Sahir (DW-6) were panch witnesses. Before trap, ten currency notes of Rs.100/- of the complainant were applied phenolphthalein powder, and a memorandum (Ext.P-4) was prepared. As per the plan, PW-3 Ram Singh and panch witness Sahir were followed by PW-2 Ashok Bhargav, Deputy Collector, PW-4 B.L. Vashist, Deputy Superintendent of Police, and PW-6 Inspector Raghuraj Shastri. When the team reached the house of the appellant in

Khidki, Distt. Datiya, and the appellant accepted the amount of Rs.1000/-, a signal was given to the police party, which immediately caught the appellant and his hands were washed in water in a bucket, which turned red. Thereafter, the raiding party asked the appellant to take out Rs.1000/- accepted by him from PW-3 Ram Singh. The currency notes recovered tallied with the memorandum (Ext.P-4) and fresh panchnama was prepared. Thereafter, the appellant was arrested and crime was registered. After investigation, the Investigating Officer R.S. Parihar (since died) filed the charge sheet against the appellant Indra Vijay Alok for his trial in respect of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. A B C

4. The trial court, after hearing the parties, appears to have framed charge against the accused to which the accused pleaded not guilty and claimed to be tried. D

5. On this, prosecution got examined PW-1 R . R . - Vishwa Deva (clerk in Collector's office), PW-2 Ashok Bhargav (Deputy Collector), PW-3 Ram Singh (complainant), PW-4 B.L. Vashisth (Deputy Superintendent of Police), PW-5 S.R. Tiwari (Assistant Grade I), and PW-6 Raghuraj Shastri (Inspector). E

6. Prosecution evidence was put to the accused Indra Vijay Alok, in reply to which he only admitted that he was Patwari of the Halka at the relevant period, and there was land in the village recorded in the name of Badri, but as to the rest of the evidence he denied the same as incorrect. F

7. In defence, the appellant got examined DW-1 Baijnath, DW-2 Ram Swaroop, DW-3 Hardas, DW-4 Swami Sharan Saxena, DW-5 Sita Ram Gupta, and DW-6 Sahir. G

8. The trial court, after hearing the parties, found that the evidence of PW-3 Ram Singh and statement given by PW-2 Ashok Bhargav (Deputy Collector) read with the statements H

- A of other prosecution witnesses, and the documents proved on record, leave no room of doubt that the accused demanded Rs.1000/- from PW-3 Ram Singh for getting entered his name and that of his mother in place of Badri in the revenue record, and Rs.1000/- was given to and accepted by the accused when
- B the trap was laid, and the same was recovered from the pocket of his pant. Thereafter, the trial court heard the accused on sentence, and sentenced him to rigorous imprisonment for a period of one year and directed to pay fine of Rs.1000/- under Section 7 of the Prevention of Corruption Act, 1988. The
- C accused was further convicted under Section 13(1)(d) read with Section 13(2) of the Act and sentenced to rigorous imprisonment for a period of two years and directed to pay fine of Rs.1000/-. For each of the defaults in payment of fine,
- D the convict was directed to undergo further three months rigorous imprisonment.

9. Aggrieved by said judgment and order dated 10.2.2000, passed by Special Judge, Datiya in Special Case No. 1 of 1992, the convict Indra Vijay Alok preferred appeal
- E before the High Court which was registered as Criminal Appeal No. 102 of 2000. The High Court, after hearing the parties, re-appreciated the evidence and concurred with the conviction and sentence recorded by the trial court. Hence this appeal
- F through special leave.

10. Learned counsel for the appellant argued before us that the panch witness Sahir has not supported the prosecution case, as such the courts below have erred in law in believing the prosecution story. Having gone through the papers on record, we do not find substance in the argument. The
- G statement of PW-3 Ram Singh (complainant) gets corroborated by the statement of PW-4 B.L. Vashist (Deputy Superintendent of Police), as well as by PW-2 Ashok Bhargav, Deputy Collector who is superior officer of the appellant's own
- H department. As such we find that the courts below have

committed no error of law in relying on the testimony of above three witnesses as trustworthy, against the statement of DW-6 Sahir, who appears to have been won over by the defence. We are of the opinion that merely for the reason that DW-6 Sahir has not supported prosecution case, the ring of truth in the prosecution case is not shaken in the present case, particularly, when the statements of remaining witnesses are credible and trustworthy.

11. It is also pointed out by learned counsel for the appellant that the Investigating Officer R.S. Parihar was not examined by the prosecution. This, in our opinion, has no legs for the reason that it has come on the record that the Investigating Officer R.S. Parihar had died when the prosecution evidence was recorded.

12. Lastly, it is submitted on behalf of the appellant that Bhagobai, mother of the complainant, from whom demand was allegedly made, was not examined, as such it cannot be said that the amount so recovered from the appellant has anything to do with the mutation. We have carefully gone through the deposition of PW-3 Ram Singh in the original record, and found that he has clearly stated that initial demand of Rs.1900/- was made to his mother, who paid Rs.900/- to the appellant, but when he came back to his village, his mother told him that further Rs.1000/- was required to be arranged. PW-3 Ram Singh further told the court that on this, he himself went to the appellant and requested not to demand further money, but he (appellant) did not relent. In the circumstances, according to PW-3, he went to Lokayukta Office and made a complaint, but the Office of Lokayukta advised him to reach to Rest House, Datiya. On this, he went to the Rest House, Datiya and made a complaint to the Vigilance Department and thereafter trap was laid, and the amount of Rs.1000/- was given by him to the appellant and recovered from him (appellant). Even otherwise, presumption can be drawn under Section 20 of the Prevention

- A of Corruption Act, 1988, regarding the motive of receiving the gratification unless it is rebutted. In the present case, in our opinion, the presumption does not stand rebutted.

13. Having considered submissions of learned counsel
B for the appellant and learned counsel for the State, and after going through the papers on record, we do not find any illegality in appreciation of evidence by the courts below. We further agree with the sentence recorded against the appellant by the trial court and affirmed by the High Court against the appellant.
C Sanction of prosecution is also proved on the record by PW-5 S.R. Tiwari. The request of learned counsel for the appellant to reduce the period of sentence to the period already undergone too cannot be accepted, in the facts and circumstances of the present case.
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14. For the reasons, as discussed above, we are not inclined to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed. The bail granted to the appellant Indra Vijay Alok is cancelled. The trial
E court shall take him into custody to serve out the remaining part of the sentence.

Devika Gujral

Appeal dismissed.