

Chhattisgarh High Court

Dawatram @ Dilip Kumar Bhardwaj vs State Of Chhattisgarh on 24 August, 2021

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.726 of 2016

Judgment Reserved on : 6.8.2021

Judgment Delivered on : 24.8.2021

Dawatram @ Dilip Kumar Bhardwaj, son of Rikhiyaram, aged about 33 years, occupation Food Inspector, Bodla Block, Kawardha, District Kabirdham, Chhattisgarh, resident of Village Semri, Tahsil Takhatpur, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Anti Corruption Bureau, Unit Raipur, District Raipur, Chhattisgarh

--- Respondent

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For Appellant : Shri Vivek Sharma, Advocate  
For Respondent : Shri Ghanshyam Patel, Government Advocate

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Hon'ble Shri Justice Arvind Singh Chandel C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 30.5.2016 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act'), Kabirdham in Special Sessions Trial No.1 of 2015, whereby the Appellant has been convicted and sentenced as under:

Conviction Sentence Under Section 7 of the PC Rigorous Imprisonment for 1 Act year and fine of Rs.50,000/-

with default stipulation Under Section 13(1)(d) Rigorous Imprisonment for 3 read with Section 13(2) of years and fine of Rs.50,000/-

the PC Act

with default stipulation

Both the jail sentences are directed to run concurrently

2. Case of the prosecution, in short, is that at the relevant time, the Appellant was posted as a Food Inspector at Block Bodla, District Kabirdham. Complainant Ashok Nirmalkar (PW2) was authorised for transporting food grains from Food and Civil Supplies Department, Kawardha by the authorised and registered transporter Rakesh Tamboli. It is alleged that e-panchnama was prepared by the Appellant to verify the transportation of food grains by the transporter along with bill. According to the further case of prosecution, bill of Rs.3,40,000 for the month of March, 2013 for transportation of food grains was not received by the transporter. Allegedly, the Appellant who was Food Inspector at Block Bodla demanded Rs.5,000 from the Complainant as illegal gratification in lieu of preparing e-panchnama. Since the Complainant did not want to give bribe, he made a written complaint (Ex.P2) before the Superintendent of Police, Anti Corruption Bureau, Raipur on 11.4.2013. For verification of the complaint, the Complainant was given a digital voice recorder and a panchnama thereof (Ex.P4) was prepared. On 16.4.2013, the Complainant informed Inspector/Investigating Officer S.K. Sen (PW12) that the Appellant had demanded bribe on 12.4.2013 and he had recorded the conversation took place in this regard. Second written complaint (Ex.P5) was submitted by the Complainant on 16.4.2013. A trap party was constituted and Dehati Nalishi (Ex.P3) was recorded after hearing the conversation recorded in the digital voice recorder. A transcription (Ex.P6) of the conversation was prepared before the panch witnesses. For giving bribe, the Complainant had brought and produced 14 currency notes in the denomination of Rs.500 each, total amounting to Rs.7,000. Their numbers were noted and they were smeared with phenolphthalein powder. The Complainant and the panch witnesses were described about the trap proceedings. The Complainant was again given a digital voice recorder and was advised to record the conversation. Thereafter, the trap party reached at Kawardha. The Complainant and shadow witness Santosh Kumar Sahu (PW7) were sent to the office of the Appellant at Kawardha. The Appellant was not found there. On being talked on phone, the Appellant called the Complainant to his house. The Complainant went to the house of the Appellant. After sometime, when shadow witness Santosh Kumar Sahu (PW7) gave a signal, the trap party entered the house of the Appellant. On being asked about the bribe money, the Appellant admitted taking the bribe money and keeping the same in the pocket of his shirt. The bribe money was recovered from the pocket of his shirt. Numbers of the recovered currency notes were compared with the numbers already noted. The numbers matched. The recovered currency notes, the shirt of the Appellant, the fingers of the Appellant as also the fingers of the Complainant were dipped into different solutions of sodium carbonate on which their colour turned into pink. The conversation took place between the Complainant and the Appellant regarding the bribe was recorded in the digital voice recorder. A transcription thereof (Ex.P11) was prepared. After obtaining necessary sanction for prosecution of the Appellant and completion of the investigation, a charge-sheet was filed against him. Charges were framed against him by the Trial Court.

3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. It was the defence of the Appellant that name of the Appellant is Dilip Kumar Bhardwaj. He was never known by names Dawatram or Daulatram. His office was not situated in Kawardha, but in the office of SDM at Bodla, which is 22 Kms. away from Kawardha. He does not know the Complainant. On 17.4.2013, i.e., the date of trap, he was sitting in his house. At that time, the Complainant came to his house and began to put money into his pocket deliberately and after deliberately putting the money into his pocket he got his hands

released from his clutches and ran away from there. However, no witness has been examined by the Appellant in his defence.

4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1 st paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that the Trial Court has wrongly convicted the Appellant without there being sufficient and clinching evidence against him on record. It was argued that both the demand and the acceptance of bribe money by the Appellant are not proved in this case. Complainant Ashok Nirmalkar (PW2) has not supported the case of the prosecution and turned hostile. He categorically admitted that he never met with the Appellant nor did the Appellant ever make any demand for money from him. He further admitted the fact that the Anti Corruption Bureau officials took him to the house of one person and there that person came out of the house then he deliberately put the tainted money into the pocket of that person and ran away from there. It was further argued that in both the written complaints (Ex.P2 and P5) name of Dawatram is written about demand of bribe money by him. Name of the Appellant, i.e., Dilip Kumar is not written in the said written complaints. There is nothing on record to establish that Appellant Dilip Kumar was ever known by name Dawatram. It was further argued that with regard to the initial demand as stated by Complainant Ashok Nirmalkar (PW2), this demand was raised in the Food Office, Kawardha. But, the fact is that office of the Appellant was situated in the SDM Office at Bodla which is 22 Kms. away from Kawardha. Therefore, the said demand was raised by the Appellant in the Food Office, Kawardha is also suspicious. Shadow witness Santosh Kumar Sahu (PW7) and the panch witnesses have also not supported the case of the prosecution regarding demand of bribe by the Appellant. Santosh Kumar Sahu (PW7) has also not supported the case of the prosecution regarding acceptance of bribe money by the Appellant. None of the transcriptions (Ex.P6 and P11) contains anything regarding demand of bribe. It was further argued that neither the sanction for prosecution against the Appellant has been proved in this case nor has it been exhibited by the prosecution before the Trial Court and nor has the sanctioning authority or any other concerned authority been examined before the Trial Court. This has caused prejudice to the Appellant and it resulted into failure of justice and, therefore also, the conviction of the Appellant is not sustainable.

6. Opposing the above arguments, Learned Counsel appearing for the Respondent supported the impugned judgment.

7. I have heard the rival contentions advanced on behalf of the parties and perused the entire material available including the statements of witnesses with due care.

8. It is not in dispute that at the relevant time the Appellant was posted as a Food Inspector at Block Bodla, Kawardha. It is also not in dispute that his office was situated in the office of SDM at Bodla.

9. In a case of illegal gratification, there are three essential ingredients to constitute the offence. They are (i) demand, (ii) acceptance and

(iii) recovery.

10. In (2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh), it was held by the Supreme Court as under:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P., (2010) 15 SCC 1 and C.M. Girish Babu v. CBI, (2009) 3 SCC 779.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

11. Further, in (2015) 10 SCC 152 (P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh), the Supreme Court held as follows:

"22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj v. State of A.P., (2014) 13 SCC 55, in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

12. Again, in (2016) 3 SCC 108 (Krishan Chander v. State of Delhi), it was held by the Supreme Court thus:

"35. It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in B. Jayaraj v. State of A.P., (2014) 13 SCC 55, A. Subair v. State of Kerala, (2009) 6 SCC 587 and P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant."

In paragraph 39, it was further held by the Supreme Court thus:

"39. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant Jai Bhagwan (PW2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order [Krishan Chander v. State of Delhi, 2014 SCC OnLine Del 2312] of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside."

13. In (2021) 3 SCC 687 (N. Vijayakumar v. State of Tamil Nadu), it was held by the Supreme Court as follows:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI, (2009) 3 SCC 779 and in B. Jayaraj v. State of A.P., (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)

(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj v. State of A.P., (2014) 13 SCC 55 read as under: (SCC pp. 58-59) "7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v.

State of A.P., (2010) 15 SCC 1 and C.M.

Girish Babu v. CBI, (2009) 3 SCC 779.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused.

When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)

(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act.

Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

14. In the light of above view taken by the Supreme Court, I shall examine the facts and statements of witnesses of the present case. In the instant case, Complainant Ashok Nirmalkar (PW2) has not supported the case of the prosecution and turned hostile. In his Court statement, he even refused to identify the Appellant. He deposed that he had done some work and some payment was due to be realised against that work and, therefore, he had gone to the food office at Kawardha. When he went to the said office, after sometime, a person came to him and told that he was Food Inspector Daulatram and demanded bribe of Rs.5,000 for clearance of his bill. On this, he submitted the written complaint (Ex.P2). He further deposed that the Anti Corruption Bureau Officials had given him a voice recorder with which he went to the Food Office, Kawardha. There that person, namely, Daulatram met with him. Then he recorded the conversation took place between him and Daulatram regarding demand of bribe in the said voice recorder. Thereafter, he went to the office of the Anti Corruption Bureau with the said voice recorder. There he was given currency notes smeared with phenolphthalein powder with which he again went to the Food Office, Kawardha. There he made search for Food Inspector Daulatram, but he was told that no Food Inspector, namely, Daulatram was working there. Thereafter, the Anti Corruption Bureau Officials took him to Bodla and after inquiring about the Food Inspector of Block Bodla, they took him to his house at Bodla. They also told him that whoever comes out of the house, he has to give him the tainted money. He further deposed that one person came out of that house and he deliberately put the tainted money into his pocket and ran away from there. He categorically admitted that the Appellant never made any demand for money from him.

15. Shadow witness Santosh Kumar Sahu (PW7), who according to the prosecution had gone to the house of the Appellant along with the Complainant, admitted the fact in paragraph 9 of his cross-examination that he and the remaining members of the trap party were hidden near the house of the Appellant and the Complainant alone had entered the house of the Appellant. In paragraph 13, he further admitted that what talks took place inside the house of the Appellant is not known to him

16. Matendra Ahmed Qureshi (PW4), another member of the trap party admitted that since the time recovery of the tainted money was made from the pocket of the Appellant, he was urging that he never demanded money from the Complainant, the Complainant deliberately put the money into his pocket and thereafter ran away from there.

17. On a minute examination of the above evidence, it is clear that Complainant Ashok Nirmalkar (PW2) has not supported the case of the prosecution at any point of time, he even refused to identify the Appellant and he categorically admitted that neither the Appellant demanded any money from him nor did he ever give the Appellant any money. He admitted the fact that he deliberately put the tainted money into the pocket of the person who had come out of the house and thereafter he walked away from there. Panch witness Matendra Ahmed Qureshi (PW4) also admitted that since the time of recovery of the tainted money from the pocket of the Appellant, he was urging that he never demanded any money from the Complainant and the Complainant deliberately put the money into his pocket and ran away from there. From the statement of Complainant Ashok Nirmalkar (PW2), it also appears that whatever demand of bribe was made at both the times, those were raised in the Food Office, Kawardha. As admitted by Complainant Ashok Nirmalkar (PW2), shadow witness Santosh Kumar Sahu (PW7), Shiv Sharan Sahu (PW8), Jerom Lakda (PW9) and

Investigating Officer S.K. Sen (PW12), at the time of trap, they first went to the Food Office (Office of the District Magistrate, Kawardha). As admitted by Investigating Officer S.K. Sen (PW12), the Appellant was posted at Block Bodla and his office was situated in the office of SDM at Bodla which is 22 Kms. away from Kawardha. In these circumstances, why the trap party went to the office of the District Magistrate, Kawardha for the purpose of trap has not been explained by Investigating Officer S.K. Sen (PW12). When the office of the Appellant was not situated in Kawardha, the Appellant would have demanded bribe at Kawardha at both the times is suspicious. Therefore, there appears substance in the defence taken by the Appellant that the Complainant deliberately put the money into his pocket at his house and ran away from there. With regard to the demand of bribe money, on examination of both the transcriptions (Ex.P6 and P11), it also appears that there is no specific demand made by the Appellant from the Complainant. Looking to the entire evidence adduced by the prosecution, in my considered view, both the demand and the acceptance of bribe money are not proved beyond reasonable doubt. Therefore, merely on the basis of recovery of tainted money, the Appellant cannot be held guilty.

18. As regards the sanction for prosecution also, from perusal of the record of the Trial Court, it appears that though the sanction has been obtained from the Law and Legislative Department, which is available on record, the sanction was not exhibited by the prosecution before the Trial Court nor was any concerned witness examined before the Court. The Appellant was ever known by names Dawatram or Daulatram is in dispute and office of the Appellant was situated in Bodla but why and how he made demand in Kawardha has been duly considered by the sanctioning authority or not at the time of granting the sanction, no witness has been examined by the prosecution in this regard before the Trial Court. This deprived the Appellant of the opportunity to examine the said concerned witness on the above point, which has resulted into prejudice to the Appellant and thereby a failure of justice has occurred in this case. From the aforesaid discussion, I find that the conviction of the Appellant is not sustainable.

19. In the result, the appeal is allowed. The conviction and sentence imposed upon the Appellant are set aside and he is acquitted of all the charges framed against him.

Sd/-

(Arvind Singh Chandel) JUDGE Gopal