

SUPREME COURT OF INDIA

Sheo Kumar Shrivastava

Vs.

State of Bihar

Crl.A.No.306 of 2002

(B.N. Agrawal and G.S. Singhvi JJ.)

05.05.2009

ORDER

1. Heard learned counsel for the parties.

2. The appellant was convicted by the trial Court under Section 161 *Indian Penal Code*, Section 5(2) read with Section 5(i)(d) of the *Prevention of Corruption Act, 1947*, and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rupees one thousand; in default, to undergo further imprisonment for a period of six months. On appeal being preferred, the High Court upheld the conviction but reduced the sentence of imprisonment to the period already undergone as it was stated that the appellant had remained in custody for a period of about one month. The allegation against the appellant was that while working as Head Assistant in the office of Superintending Engineer, Rural Engineering Organization, Boring Canal Road, Patna, he demanded rupees nine hundred from the complainant, namely, Braj Bihari Mishra (PW-14) as consideration for getting his name registered as contractor. Thereupon, PW-14 lodged a complaint with the D.I.G., Vigilance and a trap was laid leading to the recovery of rupees nine hundred from the pocket of the appellant's shirt. However, the trap party headed by Shri Arvind Prasad, Deputy Superintendent of Police, Vigilance (PW-7) did not treat the notes handed over to the complainant, which are said to have been given to the appellant by way of illegal gratification, with phenolphthalein powder and as a result of that, no test was conducted to prove the recovery of tainted notes from the pocket of the shirt of the appellant. During trial, the complainant and the only independent witness, namely, Javed Ahmed (PW-15) did not support the prosecution case and they were declared hostile. Notwithstanding these lacunas in the prosecution case, the trial Court convicted and sentenced the appellant and the High Court upheld his conviction. In our view, the trial Court and High Court committed serious error by ignoring the fact that no explanation was given by the prosecution for not applying phenolphthalein powder on the notes given to the complainant and that the complainant and the only independent witness had turned hostile.

3. For the reasons stated above, the appeal is allowed and conviction and sentence of the appellant are set aside and is acquitted of the charges.