

(Supreme Court Of India)

Umesh Manan

v.

State of M.P. Through Special Police Establishment Lokayukta Office

Criminal Appeal No. 49 Of 2017 (Arising Out Of Slp (Criminal) No. 1131 Of 2015) | 09-01-2017

A.K. Sikri, J.

1. Leave granted.

2. The appellant herein was roped in with the charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act'). Being a public servant within the meaning of Section 21 of the Indian Penal Code (IPC), sanction for prosecution was also accorded by the competent authority. The appellant stood trial. Trial Court returned the verdict of acquittal, holding that prosecution has failed to prove its case beyond doubt. In the appeal filed by the respondent/State against the said acquittal, the High Court overturned the judgment of exoneration that was given by the trial court, holding the appellant to be guilty of the aforesaid offences. After convicting the appellant, the High Court has awarded rigorous imprisonment (RI) for one year and fine of Rs. 1,000/- or to suffer RI for three months in default under Section 7 of the PC Act. Identical sentence is awarded under Section 13(1)(d) read with Section 13(2) of the PC Act with the direction that both the sentences are to run concurrently.

3. In this backdrop, this Court is called upon to decide as to whether the judgment of the High Court is correct or the view taken by the trial court was justified in law.

4. Case of the prosecution, in brief, was that on 28.07.2003, complainant Ajay Gupta made a written complaint Ex.P-2 to Supdt. of Police (Lok Ayukta), Ujjain against the appellant. He stated in the complaint that he wanted sanctioned map of the house of plot Nos. 31 and 32, Swastik Nagar, Ujjain for his own use. The said plots belonged to Shiv Narayan. Complainant applied on 22.07.2003 to Ujjain Municipal Corporation Zone No. 3 under the Right to Information Act for certified copy of the desired sanctioned map and he paid the necessary fee of Rs. 10.50 as per receipt of even date. On 28.07.2003, when he met the appellant in connection with the certified copy of the map, the latter replied that for getting the copy of the sanctioned map, complainant would have to pay Rs. 1000/- bribe and only then

the appellant would make necessary endorsement on the application and forward it to the Building Officer and copy of the map would be available only after these steps were undertaken. The appellant asked the complainant to come with the bribe amount to his house next day at 8 a.m. Since the complainant did not want to pay any such bribe, he reported the matter to the Lok Ayukta Authority as per Ex.P-2.

5. On receipt of the complaint, steps to set a trap were initiated. FIR Ex.P.16 was recorded on 28.07.2003. The next day Kaymi was recorded and various steps to be taken at the time of the trapping the appellant were explained to the trap party. The numbers of currency notes to be given were noted down. The trap was then laid and the appellant was caught red-handed with the bribe amount of Rs. 1000/- in his shirt pocket at his house. The appellant was, thereafter, put up for trial for offences under the PC Act as stated earlier.

6. The appellant abjured his guilt. In his examination under Section 313 Cr.P.C., he stated that complainant was press-correspondent or journalist by profession having nothing to do with the maps. He had no licence (as draftsman for maps) and he was putting pressure for getting maps passed illegally and on refusal by the appellant to oblige, he was falsely implicated by the complainant.

7. We may mention at this stage that before the trial court, the appellant had argued that following circumstances appearing on record were sufficient to question the veracity of the case of the prosecution, which convinced the trial court:

(a) For obtaining information under the RTI Act, no sanction of any authority is required much less that of Overseer and no file ever came to him for his endorsement;

(b) On receipt of application under the RTI Act, it is handled by the concerned clerk, who sends the concerned file to the Drawing Section where the draftsman sends back the file after noting charges required for getting the copy and return it to the Drawing Section. Thereafter, the Building Officer after giving necessary certificate returns the file to the copying section. All this showed that the accused (Overseer) did not come in the picture at any stage and he was in no way officially concerned in the matter;

(c) The complainant had no licence as draftsman (naksha naviz). He was running "Daftari" newspaper and was black-mailing officers for getting maps passed illegally. Earlier he got Bhawan Adhikari P.K.

Gupta trapped. Complainant wanted him to allay the ill-will of the Bhawan Adhikari and to get map passed illegally but on his refusing to do so, the complainant had tried to falsely implicate him. No bribe was ever demanded by him. No file or application of the complainant was ever seized from him.

(d) On the date of incident, he had not received any amount as bribe; nor was any money seized from his shirt pocket; further that the witness Shrivastava (who had put his hand inside pocket of accused) had not given 'Talashi' of his hand before putting it in the pocket of the appellant; and,

(e) Hand of arresting Constable Shiv Sharma was not got washed in sodium carbonate solution. Moreover, this Constable was friendly with complainant and hence a partisan witness.

8. The High Court, on the other hand, while upsetting the findings of the trial court has primarily been influenced by the fact that the appellant was caught red-handed and, therefore, there was very little scope left for benefit of doubt. According to the High Court, prosecution was able to prove that the appellant had accepted the gratification which stood proved from the testimony of the complainant Ajay Gupta (PW-1) and his version was corroborated in material particulars by trap witness Dinesh Kumar Shrivastava (PW-2). The High Court has also discarded the defence of the appellant that he had no role to play in the matter of grant of copy of the sanctioned map, being a Junior Overseer.

9. From the respective verdict of the two Courts arriving at contradictory conclusions, it becomes clear that the pivotal question is as to whether the appellant had demanded the money and was caught red-handed, as held by the High Court.

10. It is not in doubt that the only witness to the handing over of the money to the appellant is the complainant (PW-1) himself. He deposed that he had gone to the house of the appellant whereas the trap party remained behind at some distance. He also categorically stated that when he reached the house of the appellant, the appellant did not open the gate but kept standing behind the gate. He asked PW-1 as to whether he had brought the money. PW-1 replied in the affirmative and thereafter gave those ten notes of Rs. 100/- each, who put the money in the pocket of his shirt. After giving the money, PW-1 gave pre-arranged signal in the form of giving a call on a specified number on mobile phone and on receiving this call, the trap party reached the spot. Two persons caught hold of the wrist of the appellant which was projecting beyond the gate. Thereafter, the members of the family of the appellant opened the gate and the raiding party reached inside. During this period, two persons kept holding the wrist of the appellant. Thereafter, chemical test was undertaken and on dipping the hand of the appellant, water turned pink. Following documents were also seized from the house of the appellant:

(i) Notesheet of Case No. 2237/22703;

(ii) Application of Ajay Gupta under the RTI Act;

(iii) Receipt Ex.P.9 (Ex.P.1C being photocopy thereof);

(iv) File of Ujjain Nagar Palika Nigam No. 255/2003/3/(3) subject Shiv Narayan containing pages 1 to 24.

11. As per the aforesaid version of the prosecution, the appellant was caught red-handed and following events stand established by credible evidence:

(i) seizure of the currency notes totalling Rs. 1000/- from the appellant;

(ii) these currency notes tallied with the numbers noted earlier;

(iii) both his hands and the pocket were found to contain traces of phenolphthalein that were sprayed on the currency notes;

(iv) the forensic evidence confirmed uses of phenolphthalein and sodium carbonate solution;

(v) the documents including notesheet; application of the complainant for getting the sanctioned plan; receipt of challan; letter of the Municipal Corporation regarding the subject application; and files of the Municipal Corporation for the subject property were all seized from the residence of the appellant at the time of the arrest.

12. It has also been established that the hands of the appellant turned pink when dipped in the sodium carbonate solution. The hands of the complainant were also washed and the solution became pink.

These solutions are Ex. D and Ex. E respectively. Apart from the oral testimony of PW-1 to this effect, PW-2 also confirmed the same. Even the pocket of the shirt of the appellant was dipped in sodium carbonate solution and the solution became pink.

13. Significantly, the appellant does not dispute that the complainant (PW-1) had come to his place. He also does not dispute that on giving signal by PW-1, PW-2 as well as members of the raiding party reached where the appellant and the complainant were standing. The defence put forth by the appellant, however, was that he never demanded any money from the complainant and the reality is that the money in question was forcibly put on the person of the appellant in order to falsely implicate him. Notwithstanding the valiant attempt made by learned counsel for the appellant to project this defence, the record demonstrates that the appellant has not succeeded in his endeavour.

14. We may note in this behalf that the learned counsel for the appellant tried to point out certain contradictions in the testimonies of PW-1 and PW-2. However, we find these to be insignificant. It was also argued that the complainant was given the Tape Recorder beforehand by the raiding party to tape the conversation that would go on between the complainant and the appellant, but no such conversation was found. However, the explanation of PW-1 was that he forgot to turn on the Tape Recorder due to nervousness because of which no conversation was recorded. It is plausible when seen along with other evidence. The appellant accepts that the Cassette which was in the Tape Recorder was blank which clearly shows that Tape Recorder was not turned on. From this, no adverse inference could be drawn when we find that the prosecution has been able to otherwise prove its case on the basis of clinching evidence produced by it, regarding trap and recoveries, already noted above.

15. Only other argument advanced by the learned counsel for the appellant, on which much emphasis was laid, was that there was no reason for the appellant to demand any money as he had no role in the matter to grant a copy of the sanctioned map, being a Junior Overseer. This contention stands belied, having regard to the prosecution evidence on this aspect. The witness Harakchand Ji Sarwaan (PW-8) has testified that he was a UDC at the office of the Municipal Corporation at the relevant time being In-Charge of Zone No.3. He further stated that files relating to the same would come to him including those for providing copies, which he would then forward to the concerned Junior Overseer. He further stated that the files used to be sent to the Junior Overseer for deciding whether a site plan was to be given or not and thereafter the Junior Overseer would send the file to the Building Officer who, in turn, would forward it to the Drawing Section. Pertinently, in the present case, file in question was seized from the residence of the accused vide Seizure Memo (Ex.P-14). PW-8 testified that the said file had, in fact, been handed over to the appellant on 23.07.2003. Therefore, it cannot be said that the appellant had no role to play in the matter and that there was no question of his demanding any money.

16. We, thus, do not find any infirmity in the judgment rendered by the High Court. The present appeal is devoid of any merit and is, accordingly, dismissed.