

(2017) 12 OHC CK 0076

In the Orissa High Court

Case No : 1618 of 2017

Ajay Kumar Dandapata

APPELLANT

Vs

State of Odisha (Vig.)

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

Constitution of India, Article 311 -
Dismissal, removal or reduction in rank of persons employed in civil capacities under
the Union or a State
Code of Criminal Procedure, 1973, <a href=386

Citation : (2017) 12 OHC CK 0076

Hon'ble Judges : S.K. Sahoo

Bench : SINGLE BENCH

Advocate : P.C. Acharya, Srimanta Das

Judgement

1. This is an application under section 389 of Cr.P.C. filed by the appellant-petitioner Ajay Kumar Dandapat for suspension of his conviction passed by the learned Special Judge, Vigilance, Baripada, Mayurbhanj in V.G.R. Case No.48 of 2012 (T.C. No.14 of 2013) vide impugned judgment and order dated 20.03.2017.

2. The appellant along with one Banabihari Dutta faced trial in the Court of learned Special Judge, Vigilance, Baripada in the aforesaid case and the petitioner was charged for offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter "1988 Act") for demanding of Rs.2000/- (rupees two thousand only) from the complainant Subasini Bhanj (P.W.3) as bribe in order to show her favour. The co-accused Banabihari Dutta was charged under section 12 of the 1988 Act for abetting commission of offences by the petitioner.

3. The learned trial Court acquitted the co-accused Banabihari Dutta of the charge under section 12 of the 1988 Act but found the petitioner guilty under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act and sentenced him to undergo R.I. of one year and to pay a fine of Rs.10,000/-

(rupees ten thousand only) on each count and in default to pay the fine amount, to undergo further R.I. for three months for each default and the substantive sentences of imprisonment was directed to run concurrently.

4. Mr. P.C. Acharya, learned counsel appearing for the petitioner strenuously contended that the impugned judgment and order of conviction is not sustainable in the eye of law and the learned trial Court has not properly appreciated the evidence on record to arrive at a just conclusion. It is further contended that there is no clinching material relating to the demand of bribe by the petitioner on the date of occurrence and even the tainted money was also not recovered from the possession of the petitioner and there are material discrepancies in the evidence of the complainant, overhearing witness and the official witnesses and since in a trap case, it is duty of the prosecution to prove all the three aspects i.e. demand, acceptance and recovery of bribe money beyond all reasonable doubt and the prosecution has utterly failed in that respect, there is every chance of success in the appeal. It is further contended that the Collector, Mayurbhanj has issued a letter to the petitioner for personal hearing on 26.09.2017 under Rule 18 of the OCS (CC&A) Rules, 1962 read with Article 311 of the Constitution of India, after the judgment was pronounced by the learned trial Court. It is further contended that order of conviction against the petitioner is perverse and suffers from non-application of mind and therefore, cannot be sustained in the eye of law. It is further contended that since on the face of the impugned judgment, the petitioner has a very good case for acquittal and the appeal being of the year 2017 is not likely to be taken up for hearing in the near future and the petitioner is supposed to retire within a year, if any action is taken by the Collector, Mayurbhanj in the meantime, the pensionary benefits of the petitioner would be affected and therefore, in the interest of justice, unless the conviction is stayed/suspended, the petitioner would suffer irreparable loss and injury. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in case of P. Satyanarayana Murthy -Vrs.- District Inspector of Police reported in (2005) 62 Orissa Criminal Reports (SC) 592.

5. Mr. Srimanta Das, learned Senior Standing Counsel for the Vigilance Department on the other hand contended that there is no illegality or infirmity in the impugned judgment and order of conviction passed by the learned trial Court. He further contended that the power to suspend the order of conviction is to be exercised in exceptional circumstances and no such exceptional circumstances have been made out in the case and therefore, the Misc. Case should be dismissed. Learned counsel for the Vigilance Department relied upon the decisions of the Hon'ble Supreme Court in cases of K.C. Sareen -Vrs.- C.B.I., Chandigarh reported in A.I.R. 2001 Supreme Court 3320 and State of Maharashtra -Vrs.- Gajanan reported in A.I.R. 2004 Supreme Court 1188.

6. During course of trial, the prosecution examined five witnesses and proved twenty one documents and eleven material objects and the defence examined two witnesses. The learned trial Court in its judgment has been pleased to hold

that the complainant in her elaborate and sustentative evidence deposed that the petitioner demanded money to enable her to get last dose of payment for Indira Awas House and the circumstantial evidence echoes that the petitioner after initial demand, made demand of the bribe at the spot, received the same from P.W.3 and handed over to accused Dutta, giving rise to the recovery from accused Dutta. It is further held that the evidence of the complainant substantiates the prosecution case and nonexamination of the scribe is of no consequence. It is further held that evidence adduced by P.Ws.1 to 4 found to be consistent with the prosecution case and despite cross-examination, nothing substantial could be elicited, to discredit their veracity. Learned trial Court further held that the prosecution has succeeded in establishing its case that on 11.12.2012, the petitioner demanded bribe from the complainant at the spot and accepted the same from her and that the complainant had gone there on the basis of prior demand of the petitioner to show her official favour and thereby the prosecution has proved its case against the petitioner for offences under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act.

7. In the case of P. Satyanarayana Murthy (supra) relied upon by the learned counsel for the petitioner, it is held as follows:- "23. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of P.W.1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/- from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned Counsel for the State to co-relate this statement of P.W.1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of P.W.1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under section 7 or 13(1)(d)(i) & (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 03.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e., 4.10.1996. However, the testimony of P.W.1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under section 7 or 13(1)(d)(i) & (ii) of the Act against the appellant has been proved beyond reasonable

doubt."

8. In case of K.C. Sareen (supra) relied upon by the learned counsel for the Vigilance Department, it is held as follows:- "10. The legal position, therefore, is this: Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that, we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is different matter.

11. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functions of the public offices through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate Court or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid

the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction.

12. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant, the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

9. In the case of Gajanan (supra) relied upon by the learned counsel for the Vigilance Department, it is held as follows:- "5. In the said judgment of K.C. Sareen (supra), this Court has held that it is only in very exceptional cases that the court should exercise such power of stay in matters arising out of the Act. The High Court has in the impugned order nowhere pointed out what is the exceptional fact which in its opinion required it to stay the conviction. The High Court also failed to note the direction of this Court that it has a duty to look at all aspects including ramification of keeping such conviction in abeyance. The High Court, in our opinion, has not taken into consideration any of the above factors while staying the conviction. It should also be noted that the view expressed by this Court in K.C. Sareen's case (supra) was subsequently approved followed by the judgment of this Court in Union of India v. Atar Singh and Anr. (2003) 12 SCC 434."

10. Coming to the ratio laid down by the Hon'ble Supreme Court in case of P. Satyanarayana Murthy (supra), it appears that in that case on account of the demise of the complainant, it was held that the primary evidence, if any, of the demand was not forthcoming and P.W.1 S. Udaya Bhaskar did not reproduce the demand allegedly made by the appellant to the complainant. The factual scenario of the present case is distinguishable from the case of P. Satyanarayana Murthy (supra). In the present case, the complainant has stated about the demand raised by the petitioner for disbursement of the last dose of aid under Indira Awas Scheme and demand of bribe was settled at Rs.4000/- and the complainant agreed to pay Rs.2000/- initially and to pay the balance of Rs.2000/- later on. The complainant has stated that on the date of occurrence, the petitioner asked her if she had brought the money to which she answered in affirmative and then the petitioner asked the complainant to hand over the money to him and accordingly, she handed over the money to the petitioner and the co-accused Banabihari Dutta who was standing by the side of the petitioner, took away the money from the petitioner and that the tainted money was recovered from the co-accused Banabihari Dutta by the vigilance police. The evidence of P.W.2 who

has acted a shadow witness in the case also indicates that the complainant talked with the accused in the office and the petitioner asked "Mun Jaha Kahithili Anichhaki", to which the complainant replied assertively and then the petitioner told "Hau Dia" and then the complainant handed over the tainted currency notes to the petitioner, who received it and handed it over the same to the co-accused who was standing nearer to him and the co-accused received it and kept it in his left side shirt pocket and the tainted money was recovered from the left side shirt pocket of the coaccused.

11. P.W.1 is another official witness who stated that when getting signal, they rushed to the G.P. office, they found the petitioner was sitting on the chair and after the complainant identified the petitioner and told that he had taken the money from him and handed over to the co-accused, the right hand of the petitioner was dipped inside the solution which turned to pink and similarly the hand wash of the co-accused was taken which also in the solution changed its colour to pink and then the tainted money was recovered from the pant pocket of the coaccused.

12. P.W.4 was the Inspector of Vigilance, Balasore has also stated that getting indication, they came to the G.P. office where the hand wash of the petitioner was taken and the right hand wash in chemical solution changed its colour to pink. Similarly the hand wash of co-accused Banabihari Dutta was taken which also in the chemical solution changed its colour and the currency notes were recovered from the co-accused Banabihari Dutta from his pant pocket and the pocket wash also changed its colour to pink.

13. Therefore, the contention of the learned counsel for the appellant that there is absolutely no clinching evidence relating to demand and acceptance of the bribe cannot be accepted at the moment. Even though the recovery of tainted money was not made from the possession of the petitioner but since he had passed the money to the co-accused from whom the recovery has been made and from the change of colour of the hand washes of the appellant and the co-accused taken in sodium carbonate solution, it lends corroboration to the evidence of the prosecution witnesses as to how the money passed from the complainant to the petitioner and then to the co-accused. Therefore, it cannot be said at this stage that it is a case of no evidence. The learned trial Court has accepted the prosecution version and discarded the defence evidence. Whether the impugned judgment and order of conviction would be sustainable in the eye of law is to be adjudicated at the final stage of hearing of the appeal.

14. Therefore, I am of the view that since no exceptional case is made out by the appellant and he has been found guilty in a trap case, I am not inclined to suspend the operation of the order of conviction.

15. Accordingly, the Misc. Case filed by the petitioner stands dismissed.