

**(2024) 10 JH CK 0050**

**In the Jharkhand High Court**

**Case No :** Criminal Appeal (S.J.) No. 1256 Of 2003??????????

Anandi Prasad Singh

APPELLANT

Vs

State Of Jharkhand through Central Bureau of Investigation

RESPONDENT

**Date of Decision :** 29-10-2024

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)

**Citation :** (2024) 10 JH CK 0050

**Hon'ble Judges :** Deepak Roshan, J

**Bench :** Single Bench

**Advocate :** Shailesh, Anil Kumar

**Final Decision :** Allowed

## Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.

2. This appeal is directed against the Judgement of conviction and order of sentence, both dated 12-8-2003, passed by learned Special Judge,-CBI cum 4th Additional Sessions Judge, Dhanbad in R. C. Case no. 2A/94D; whereby the appellant has been convicted under Section 7 & 13(2) of the Prevention of Corruption Act, 1988 and has been sentenced to undergo R. I. for 2 years and to pay fine of Rs. 500/- under each section and in default, to undergo S.I. for 2 months and both the sentences were directed to run concurrently.

3. The brief fact of the case is that on 25-1-1994, Vijay Kumar, made a complaint before the Superintendent of Police, Central Bureau of Investigation, Dhanbad alleging therein that the appellant demanded a sum of Rs.9000/- for payment of bill.

On the basis of such allegation, a case was registered on 26-1-1994. On 27-1-1994, a team was constituted and they proceeded to the office of the appellant. On the way to the office, the complainant met with the appellant and

on seeing him, the complainant alleged to have disclosed that he brought Rs. 500/- and then the appellant asked the complainant to go towards Colliery Store and to pay the amount.

Upon such instruction, the complainant alleged to have taken out the tainted amount of Rs. 500/- and handed over it to the appellant but the appellant directed the complainant to pay the amount to another accused Jai Gobind Singh. Jai Gobind Singh kept the money in his left pocket of the shirt and he was caught red handed. Preliminary memorandum was prepared in presence of witnesses.

After investigation, charge-sheet was submitted against the appellant and Jai Gobind Singh under Sections 7 and 13(2) and Under Section 13(1) (d) of the Prevention of Corruption Act, 1988 for which appellant pleaded not guilty and claim to be tried and finally trial court convicted them under the aforesaid sections.

4. Mr. Shailesh Kumar, learned counsel for the appellant submits that there are material contradictions and inconsistencies in the evidence of the P.W.s. He also submits that it is quite impossible to believe that money was demanded by the appellant; having been offered by the complainant, but the amount was not paid to the appellant; rather it was admittedly paid to Jai Gobind Singh. This fact having not been noticed by the learned Trial Court, the impugned judgement is liable to be set aside.

He further submits that even memorandum of evidence or seizure list does not indicate that it was recovered from the possession of the appellant and even the tainted money having not found and recovered from the possession of the appellant, the offence under Section 7 of the Prevention of Corruption Act cannot be attracted.

5. Learned counsel further submits that after seizure, the said money was kept in a sealed envelope which was signed by the seizure witness and was opened in front of him in at the time of exhibit from which one small sealed envelope was taken out which was opened in front of him and it did not bear his signature and which contained another unsealed envelop inside of which Rs.500/- was found.

He contended that from the deposition of seizure witness it can safely be concluded that tainted notes which were recovered were not sealed at the spot which is a serious infirmity in the prosecution and casts a doubt on the whole prosecution story.

6. Mr. Anil Kumar, learned A.S.G.I appearing for the C.B.I opposed the prayer of the appellant for acquittal and submits that no error has been committed by learned trial court and prosecution witnesses have considerably proved the charge against the appellant by cogent evidence. It is an open and shut case, where the appellant was trapped red handed. As such, no interference is required.

7. Having heard learned counsel for the parties and after going through L.C.R.

and the impugned judgement it transpires that the demand and acceptance of bribe is not proved in the instant case, inasmuch as, P.W.2 who is a shadow witness; in his deposition has deposed at para 4 that the complainant met with the appellant on the way they talked each other but he did not hear and also could not hear the demand of bribe from the appellant.

He further deposed that A.P. Singh did not take the money in his hand. For better appreciation, para 4 of the deposition of P.W.2 is extracted herein below.

8. By going through the deposition of P.W.2, it can be inferred that demand has not been proved by the shadow witness, inasmuch as, he has not heard anything regarding demand by the appellant and further appellant did not take the money in his hand; as such acceptance has also not duly proved. It is necessary to mention here that nowhere he states that Jai Govind Singh stated that he received money at the behest of the appellant.

9. Further, as per this witness at para 4 of his deposition, A.P. Singh (appellant) never touched the tainted money and at para 10 he deposed that both the hands of the appellant turned pink and according to P.W.4 at para 9 after the seizure of money appellant's both hands were dipped into glass of water wherein right hand turned pink however colour of glass of water as well his left hand did not change.

From the deposition of these two witnesses, it appears that either the appellant never touched the money or he took the money in his hands; both the possibility cannot be true, as such the witnesses cannot be relied. Further, if the appellant never touched the money as per the shadow witness, his hands cannot turn pink and if he took the money his hands will turn pink and, in this regard, also there are contradictory statements by the witnesses.

On contradiction of statement between the witnesses, it would be profitable here to refer the case of Suraj Mal v. State (Delhi Admn.) reported in (1979) 4 SCC 725 wherein at paragraph no.2 the Hon'ble Court has held as under :-

"2...It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses...."

10. It is further evident from the deposition of P.W.14 at Para 25 who is the I.O. of this case, that at the time of trap, the complainant went to the store and Naresh Mohan Ram (P.W.2) was at the gate. After the entire transaction was completed, i.e., taking money, giving money, accepting money, Naresh Mohan scratched his head and made a gesture. Only after that gesture, he and other members of their team came to know that the transaction was done. He did not see the taking or giving of money. Except Naresh Mohan and the complainant, other members of the team took all the positions with us at the time of transaction. It further transpires from Para 29 of his deposition that - Whatever

conversation took place between the complainant and the appellant in the storeroom and whatever transaction took place, was heard and seen only by Naresh Mohan Ram.

As such, according to this witness the only eye witness was P.W.2 however, the said witness i.e. P.W.2 has made contradictory statements in his deposition thereby it casts a grave doubt on the veracity of the prosecution story.

11. Further, the prosecution has miserably failed to prove the place of occurrence, inasmuch as, P.W.2 has deposed that Complainant and the appellant went to the office of appellant and he remained at the door of the office. Relevant part of deposition para 4 is quoted herein below.

Further, from the deposition of p.w.6. at para 4 it transpires that he also reiterates the place of occurrence as the office of the A.P.Singh. Relevant part of para 4 is quoted herein below:

Thus, by going through the deposition of P.W.2 & P.W.6, it appears that the place of occurrence was office of the appellant-A.P.Singh; whereas as per the case of the prosecution, the place of occurrence was store room.

12. As stated hereinabove, sealing of money at the spot is also doubtful, inasmuch as, the seized money when it was opened in court come out from unsealed envelope; whereas as per the prosecution case, it was sealed at the spot itself as such seizure itself becomes doubtful which further cast a doubt in the prosecution case.

At the cost of repetition, it is evident from the deposition of P.W.2 at para 6 & 8 that after seizure, the said money was kept in a sealed envelope on which he had signed which was opened in front of him from which one small sealed envelope was taken out and that was opened in front of him it did not bear his signature and which contained another unsealed envelop inside of which Rs.500/- was found. Relevant part of deposition at para 6 & 8 are quoted herein below:

It further appears from the deposition of P.W.4 at para 6 that after seizure of bribe money it was sealed and he also put his signature. Relevant part is quoted herein below:

From the deposition of the above mentioned P.Ws, it appears that the money seized was sealed and signed by the witnesses; however, at the time of exhibit the money was taken out from an unsealed envelope and which also did not contain the signature of the witnesses; as such tampering of evidence cannot be ruled out here.

13. Taking into consideration the failure of prosecution to prove the demand and acceptance of money in the peculiar facts and circumstances of this case coupled with the fact of failure to prove the place of occurrence and non-sealing of the seized notes and the law laid down by the Hon'ble Apex Court it cannot be concluded that prosecution has been able to prove its case beyond reasonable

doubt as such the conviction under Section 7 & 13(2) of the Prevention of Corruption Act, 1988 cannot be sustained. The learned trial court has failed to notice all these aspects of the matter while convicting the accused-appellant; which cannot be sustained in the eye of law.

14. Having regards to the aforesaid observations and discussions, the instant criminal appeal stands allowed and the judgment of conviction and the order of sentence, both dated 12-8-2003, passed by learned Special Judge,-CBI cum 4th Additional Sessions Judge, Dhanbad in R. C. Case no. 2A/94D, is hereby, quashed and set aside. Accordingly, this Criminal appeal is allowed.

15. The appellant shall be discharged from the liability of his bail bonds.

16. Let a copy of this order and the lower court record be sent to the court concerned forthwith.