

(2024) 07 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 1064 Of 2012

Ashish Kumar

APPELLANT

Vs

Union Of India through C.B.I.

RESPONDENT

Date of Decision : 03-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313

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

Citation : (2024) 07 JH CK 0010

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : J.K. Mazumdar, Anil Kumar, Nitish Parth Sarthi

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

Heard the parties

1. This appeal is directed against the judgment of conviction and order of sentence passed in R.C. Case No. 16/08-R whereby and whereunder, the appellant has been convicted and sentenced under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

2. A complaint was received from one Mahohar Chaudhary against the appellant Ashish Kumar who was serving as Field Officer, State Bank of India, Tarajori Branch, Deoghar that he demanded illegal gratification of Rs.500/- for processing the loan application of the cousin uncle of the complainant.

3. After preliminary enquiry dated 12.11.2008, a trap was laid on 14.11.2008 at State Bank of India, Tarajori Branch, Deoghar in which the appellant was caught with tainted money by the trap team.

4. Police on investigation submitted the charge sheet under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. After cognizance, charge

was framed and the appellant was put on trial.

5. Altogether 11 witnesses were examined on behalf of the prosecution and the relevant documents were adduced into evidence, marked as exhibits.

6. After prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C. The defence is of innocence but no specific defence was pleaded.

7. Judgment of conviction and order of sentence has been assailed on the ground that after receipt of the complaint no verification was conducted before institution of the case. There is absolutely no evidence that the complaint, which was received, was verified.

8. It is further argued that the complainant had no interface with the accused/appellant and as per the complaint illegal gratification was demanded from Gopal Chaudhary, who happened to be the uncle of the complainant Manohar Chaudhary.

9. It is consistent case of the prosecution as disclosed in the complaint petition that illegal gratification was demanded from Gopal Chaudhary who has been examined as PW8 and he has specifically stated in para 1 that such a demand has not been made from him, rather it was made from Manohar Chaudhary who is the complainant of the case. In this way, the fundamental ingredient for proving the charge has not been established in the present case.

10. Gopal Chaudhary had not even applied for loan, which will be evident from his deposition in para 1 that he has asked his nephew to get the loan sanctioned from the bank as he was not well. Further, he has not disclosed any document in support of his medical treatment and illness which prompted him to depute the complainant for getting loan from the bank and even the name of the doctor has not been disclosed.

11. Further, currency note which is said to be seized from the appellant has not been produced and made the material exhibit in the present case.

12. Recovery of tainted money was made from the pocket of the appellant. However, as per the recovery memo (Ext. 2 Series), tainted amount was seized from the socks of the appellant. In this way, neither demand nor recovery has been proved from the appellant. Time has also not been mentioned that at what time trap was laid.

13. PWs 5 and 6, who are bank employees, have deposed in their cross-examination that no complaint regarding non-payment of loan was made by the complainant or his uncle.

14. Learned ASGI appearing for the CBI has defended the impugned judgment of conviction and order of sentence and submitted that PW4 has proved the verification report which has been marked as Ext.3. Therefore, it is not factually correct that no verification was done. It is further argued that for processing of

loan amount, demand of illegal gratification was made and it is not relevant from whom the said demand was made, rather it was made from the complainant (PW1) or his uncle Gopal Chaudhary. On the point of trap, PWs 1 and 3 are the witnesses. PW3 is shadow witness who had accompanied the complainant and deposed in para 3 that the trap was laid at 4:30 pm when on the approach of the complainant, the accused asked him whether he has brought the amount. The appellant received the amount of Rs.500/- in his right hand and assured him of the work to be done. Later on his signal the other members of CBI came there and apprehended the accused and tainted amount was seized from the socks of the appellant.

15. PW 5, who is the bank employee, has deposed in para 1 that the processing of loan was done by the appellant who was serving as Field Officer entrusted with the work of survey, recommendation and forwarding loan application. The documents, which were submitted on behalf of the complainant, have been marked as Ext. 3 Series. PW7 has proved the CFSL report which has been marked as Ext. 4 and bottles bearing his signature, which were marked as Ext. 2/127 to 2/130.

16. I find much force in the argument advanced on behalf of the appellant that there are vital contradictions in the evidence of prosecution regarding the demand of illegal gratification. As per the complaint filed by Manohar Choudhary, the said illegal demand was made by the appellant from his uncle Gopal Choudhary, but it has been categorically deposed by Gopal Choudhary (PW-8) that the said demand was made from his nephew Manohar Choudhary (PW-1) who had been entrusted with the work of getting loan amount sanction from the Bank. Further, it has also come in evidence that no complaint was made to the Bank for the delay in the sanction of the loan.

17. The sanction of prosecution has also not been proved in the present case. It has been held in *A. Sreenivasa Reddy v. Rakesh Sharma*, (2023) 8 SCC 711:

In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant.

18. In view of the contradictory accounts on demand, this Court is of the view that the Appellant is entitled to benefit of doubt.

Judgment of conviction and order of sentence is set aside and this Cr. Appeal is allowed.

Sureties are discharged from the liability of their bail bond.