

(2022) 01 CHH CK 0082

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 2212 Of 1998????

Balduram Sahu

APPELLANT

Vs

State Of Madhya Pradesh (Now Chhattisgarh), ?

RESPONDENT

Date of Decision : 10-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 342
Prevention of Corruption Act, 1947 — Section 4(1), 5(1)(d), 5(2)
Evidence Act, 1872 — Section 101
Indian Penal Code, 1860 — Section 161

Citation : (2022) 01 CHH CK 0082

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench?

Advocate : F.S. Khare, Raghvendra Verma?

Final Decision : Allowed

Judgement

S.No.,Conviction,Sentence

1.,Under Section 161 of I.P.C.,"R.I. for 1 year and to pay fine of Rs. 1000/-, in default of payment of fine

amount further imprisonment of R.I. for 3 months

2.,"U/s 5(1) (d)5(2) of the Preven(cid:40)on of

Corruption Act","R.I. for 1 year and to pay fine of Rs. 1000/-, in default of payment of fine

amount further imprisonment of R.I. for 3 months

9. Panch witness R.N. Singh (PW-8) has admitted the fact that the currency notes were recovered from the register and has stated in para 11 of his,,

cross-examination that,",,

10. Investigating Officer S.S. Gour (PW-9) has admitted the fact in para 14 of his

cross-examination that,",,

In the present case, it is an admitted position that there is no witness to demand and acceptance of money by the appellant except the complainant. In",,,

the matter of Yashwanta Rao Maratha Vs. State of M.P. (Now C.G.) reported in 2012 (1) C.G.L.J. 132 in para 12, it has been held as under:-",,,

11. In Panalal Damodar Rathi Vs. State of Maharashtra reported in AIR 1979 SC 1191 and Gulam Mahmood A. Maled Vs. The State of Gujarat,,,

reported in AIR 1980 SC 1558, on which the reliance has been placed by learned counsel for the appellant, the Supreme Court held that the",,,

complainant would be in no better position than accomplice after introduction of S. 165-A of the IPC and there could be no doubt that the evidence of,,

the complainant should be corroborated in material particulars. After introduction of S. 165-A of the IPC making the person who offers bribe guilty of,,

abetment of bribery the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars,,

connecting the accused with the crime has to be insisted upon. In Panalal Damodar Rathi Vs. State of Maharashtra (supra), there was no",,,

corroboration of testimony of the complainant regarding the demand for the money by the appellant. The Supreme Court said that on this crucial,,

aspect, therefore, it has to be found that the version of the complainant was not corroborated and, therefore, the evidence of the complainant on this",,,

aspect cannot be relied on.,,,

12. In Trilok Chand Jain Vs. State of Delhi reported in AIR 1977 SC 666, the Supreme Court following the judgment in Mahesh Prasad Gupta Vs.",,,

State of Rajasthan reported in AIR 1974 SC 773, held that the degree and the character of the burden of proof which Sec. 4 (1) casts on an accused",,,

person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under Section 101, Evidence Act",,,

rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under Section 342, Cr.P.C. (as it then",,,

was) may not be enough, the burden on him to negate the presumption may stand discharged if the effect of the material brought on the record, in its",,,

totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere",,,

preponderance of probability in his favour; it is not necessary for him to establish

his case beyond a reasonable doubt.,,

In the present case, defence of the appellant was that the complainant do not have any registered sale deed and he kept the currency notes in the",,,

register without his knowledge.,,

13. The Investigating Officer S.S. Gour (PW-9) has admitted the fact that the currency notes were recovered from the register therefore,",,,

presumption under Section 4 (1) of the Prevention of Corruption Act, 1947 was rebutted by the appellant.",,,

14. Looking to the evidence of the prosecution witnesses, it appears that the currency notes were recovered from the register and it is also admitted",,,

by panch witness that the colour of mixture was not pink, there is no evidence and the prosecution has failed to prove the demand and acceptance of",,,

bribe by the appellant from the complainant. Mere recovery of money from the register of the appellant by itself cannot prove the charges of,,

prosecution against the appellant in absence of any evidence to prove demand of bribe or to show that the accused/appellant voluntarily accepted the,,

money.,,

15. For the above reasons, the appeal is allowed, The conviction and sentence awarded to the appellant u/s 5(1)(d) 5(2) of the Prevention of",,,

Corruption Act and u/s 161 of IPC are set aside. The appellant is acquitted of the charges framed against him. The appellant is on bail. His bail bonds,,

stand discharged.,,