
(2011) 03 JH CK 0033

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 1496 of 2005

Bhubneshwar Jha

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2011) CriLJ 2758

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jaya Roy, J.—The present appeal has been filed by the Appellant against the judgment of conviction and sentence dated 23.11.2005 passed in R.C. Case No. 21(A)/94 (R) by the Special Judge, C.B.I. Ranchi, whereby the Appellant has been convicted u/s 7 and 13(2) read with 13(1)(d) of the P.C. Act and has been sentenced to undergo rigorous imprisonment for two years u/s 7 of the P.C. Act and further sentenced to pay a fine of Rs. 4,000/- in case of default further to undergo simple imprisonment for one month. The Appellant is further sentenced to undergo rigorous imprisonment for three year u/s 13(2) read with 13(1)(d) of the P.C. Act and sentenced to pay a fine of Rs. 6,000/- in case of default further to undergo simple imprisonment for two months. All the sentences were ordered to run concurrently.

2. The case of the prosecution in short is that the complainant Faiyaz Bihari had deposited Bank Guarantee of one Lakh rupees along with an application on 19.9.1994 for whole sale Trade of Coal in the C.C.I. and requested Sri Bhubneshwar Jha, dealing assistant to process his application and the said dealing assistant asked him to come after 10 to 12 days. It is further alleged that on 3.10.1994 the complainant met with Bhubneshwar Jha in his office and asked him about his work, then he told the complainant that his application will be sent to Legal Section of C.C.I. as per the procedure of C.C.I. and the Bank Guarantee

will be verified from the Bank and thereafter, D.O. will be issued from the Sales Department. The accused-Appellant also asked the complainant to pay Rs. 200/- (two hundred) for processing. The complainant asked the accused-Appellant to do his work without taking any money but he told that without taking money, he will not process his paper. The complainant did not want to give bribe to Bhubneshwar Jha, so he made a complaint to the S.P., C.B.I. Ranchi.

3. The allegations in the written complaint submitted by the complainant were verified and after its confirmation, F.T.R. was registered. Thereafter, in order to catch hold of the Appellant, the C.B.I arranged a trap. After observing the pre-trap observation, Rs. 200/- (two G.C. notes of 100 denominations) brought by the complainant was tainted with Phenolphthalein Powder in presence of witnesses and a preliminary memo was prepared which was signed by the independent witnesses, complainant and all other members of the trap team.

4. After completing the pre-trap formalities, the trap party including the independent witnesses and the complainant namely Faiyaz Bihari proceeded for going to C.C.L. Office at about 12.30 P.M. and reached there at about 12.35 P.M. and location of the office and topography of area was studied. The Sales Office of the C.C.L., in which Bhubneshwar Jha was working, was situated near the main gate of entrance of the C.C.L. Office in the right hand side, adjacent to the State Bank of India. The trap team members and witness Sri S.B. Prasad took their position near the office of the Sites department. Thereafter, the complainant namely Faiyaz Bihari entered into the office and the independent witnesses Sri R.K. Lal and Sri B.N. Singh followed him. The accused-Appellant namely Bhubneshwar Jha was sitting in the hall alone though there was another table also for other assistants. The complainant Faiyaz Bihari approached the accused Bhubneshwar Jha and sat on a chair lying vacant towards left side of the accused and they talked about 5 minutes and thereafter, accused Bhubneshwar Jha extended his left hand and the complainant took out the tainted G.C. Notes and paid to the accused. Accused Bhubneshwar Jha transferred the G.C. notes in his right hand and after being satisfied that there is Rs. 200/-, kept the G.C. Notes in between some files in the right side of the lower drawer of his table. The acceptance of bribe amount was seen by the witnesses namely R.K. Lal and B.N. Singh. The complainant gave pre-fixed signal and on getting signal, the members of trap team and the witnesses rushed towards the accused Appellant, Sri N. Jha, Dy. S.P. after disclosing his identity, challenged Sri Bhubneshwar Jha accused-Appellant for having demanded and accepted Rs. 200/- from the complainant. Accused Bhubneshwar Jha turned pale but he explained that Faiyaz Bihari had taken loan of Rs. 200/- from him about 15 days ago and today the same amount has been returned. In the meantime, Sri R.K. Jha came with trap kit and on being asked, he prepared a solution of sodium carbonate in which right hand finger of accused Bhubneshwar Jha was washed in the said solution and colour of the solution turned pink. This pink solution was transferred into a clean glass bottle which was sealed and signed by all. This bottle was marked "R" for identification. Thereafter, a fresh solution of sodium carbonate was prepared in

another tumbler and on being asked, the accused-Appellant Bhubneshwar Jha washed his left hand finger in the said solution and colour of the solution turned pink. This pink solution was transferred in another clean glass bottle and the same was duly sealed and signed by all. This bottle was marked "L" for identification. Thereafter, Bhubneshwar Jha produced Rs. 200/- from lower drawer of his table. The number and denomination of the G.C. Notes were compared with the numbers recorded in pre-trap memorandum by the witnesses which tallied in Toto. This G.C. Notes of Rs. 200/- were also placed in an envelope which was duly sealed and signed by all. The accused-Appellant, Bhubneshwar Jha was taken into custody. On being asked, the accused Bhubneshwar Jha look out a folder from the lower drawer of his table over which "Coal centre chimanpur, (Hatta) Sheohar, Sitamarhi (Bihar) Faiyaz Bihari, Basahiya Shaikh Piprabi Sitamarhi, 16.9.04" was written. In the meantime, a number of curious colleagues of the accused and private parties assembled and it became inconvenient to proceed further there, as such the trap team along with witnesses, complainant and accused came back to the C.B.I. Office where a memorandum of all the post trap proceeding was prepared.

5. The investigation was taken, statements of the witnesses were recorded, seizure memos were prepared and material exhibits were sent to the Forensic Science Laboratory, Calcutta and thereafter on receiving the opinion of the expert and on receiving the sanction order for prosecution, the charge sheet was submitted against the Appellant. The defence of the accused is total denial of the charges and further defence is that the complainant had taken loan from the accused and when he returned the loan amount, he has been falsely implicated in this case.

6. In order to establish the charges against the Appellant, altogether 8 witnesses were examined on behalf of the prosecution and several documents were adduced in evidence which were marked as Exhibits. No witness has been examined on behalf of the defence.

7. On the basis of the oral and documentary evidences, the Special Judge, C.B.I convicted and sentenced the Appellant as staled above.

8. The learned Counsel appearing for the Appellant has submitted that so far as the factum of the payment of money made by the complainant and acceptance of money by the Appellant is not being challenged by him. The learned Counsel 1ms stressed much on the point that money so paid by the complainant was not by way of bribe but it was a repayment of loan which was advanced by the Appellant to the complainant and therefore, it is absolutely wrong to say that the Appellant accepted Rs. 200/- from the complainant as bribe. He has further submitted that the prosecution has totally failed to prove that in fact, the money so recovered which was received by the Appellant, was actually bribe money.

9. The learned Counsel appearing for the Appellant has further pointed out that the two independent witnesses are P.W.3 and P.W.5 and the complainant is P.W.4.

The independent witnesses P.Ws. 3 and 5 have very specifically stated in their evidence that neither they have heard nor they have seen the Appellant to demand anything from the complainant. Therefore, they are not the witnesses in respect of any demand made by the accused. They have only stated in their evidence about the acceptance of the money and recovery of the same from the lower drawer of the table only not from the possession of the Appellant. The only witness regarding the demand is the complainant himself (P.W.4). According to the learned Counsel of the Appellant, the complainant has mentioned in his written complaint that the accused-Appellant has demanded a sum of Rs. 200/- as bribe money from him but he has stated in his evidence-in-chief that the accused-Appellant has only demanded sweets and service (SEVA) from him for doing his work. Thereafter, the complainant in his cross-examination totally denied (that the accused-Appellant have demanded anything from him as bribe money. He has further stated as because the accused-Appellant had thrown his file, the complainant became angry and went to the C.B.I Office. He has further stated in his evidence that the CBI Office has dictated him and on the said dictation, he wrote a written complaint and on the basis of which, the present FIR has been drawn. He has further stated in his evidence that the prosecutor has also threatened him.

10. It is further contended that admittedly in respect of demand, the only witness is the complainant himself. But as in his evidence he has given contradictory statements, he has been declared hostile. Therefore, it is very clear that the prosecution has not been able to prove the demand of money by the Appellant from the complainant. If the demand is not proved, it cannot be said that the money which had been recovered from the possession of the Appellant was bribe money. Furthermore, in view of the major contradictions in the evidence of the complainant, he cannot be said as trustworthy witness. Therefore, the prosecution has not been able to prove its case and the Appellant is entitled to be acquitted.

11. The learned Counsel appearing for the C.B.I, Mr. Md. Mokhtar Khan has submitted that the acceptance and recovery had been proved. Therefore, burden is on the accused to prove that it was not given by way of illegal gratification. In this context, he has cited a decision of the Hon'ble Apex Court reported in (2000) 9 SCC 752 in the case of State of A.P. v. Kommaraju Gopala Krishna Murthy in which, the Hon'ble Apex Court has held:

1. After hearing both sides we are not inclined to disturb the finding of the High Court that the defence adopted by the Respondent (that the amount paid to him by PW 1 was in repayment of a hand loan advance earlier) cannot be dubbed as improbable. At the same time we do not approve of a proposition of law propounded by the High Court that in such cases the initial burden is on the prosecution to prove that the amount was not paid by returning the hand from. It is well settled that when the amount is found to have been passed to the public servant the burden is on the public servant to establish that it is not by

way of illegal gratification.

2. We, therefore, dismiss this appeal.

12. In reply to the argument advanced by Mr. Khan the learned Counsel of the Appellant submits that the accused-Appellant after recovery of the said amount, immediately explained that he has received the said Rs. 200/- from the complainant which he had given to the complainant as loan about 15 days back. This has been admitted by P.W.7 (Dy, S.P, C.B.I Ranchi) who was the member of the trap team and was present at the time of the recovery. Furthermore, when the prosecution has failed to prove the demand, no question can arise whether the demand is for illegal gratification or repayment of loan. The accused cannot be convicted only on probability or suspicion. In this regard, the learned Counsel of the Appellant has also cited a decision of the Hon''ble Apex Court reported in 2001 (2) East. Cr (sic) 118 (SC) in the case of M. Abbas v. State of Kerala, the Hon''ble Apex Court has held:

10. ...May be, the allegation that the Appellant accepted the amount as bribe to process his refund application is true but the Court cannot convict an accused only on such probability or suspicion, however strong it may be. Between may be true and must be true, there is a long distance to travel and in this case the prosecution has failed to travel that distance through any unimpeachable evidence. The case of the prosecution has not been established beyond a reasonable doubt.

13. Counsel of the Appellant has also cited another decision of the Hon''ble Apex Court reported in 2006 (2) SCC 250 in the case of Om Prakash v. State of Haryana in which the Hon''ble Apex Court held:

22. In view of the aforementioned discrepancies in the prosecution case, we are of the opinion that the defence story set up by the Appellant cannot be said to be wholly improbable. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the Act. Even otherwise, where demand has not been proved, Section 20 will also have no application. Union of India v. Purnandu Biswas and T. Subramanian v. State of T.N.

14. I have carefully gone through the entire evidence: particularly P.Ws. 3, 4 and 5. Admittedly P.Ws.3 and 5 who are the independent witnesses, have stated in specific words that they have not seen or heard that the Appellant demanded any money from the complainant. Furthermore, there are major contradictions in the evidence of the P.W.4, the (complainant) for which, he has been declared hostile. Therefore, in my view there is force in the submission of the learned Counsel appearing for the Appellant. As there is no evidence regarding the demand of money by way of bribe and the complainant has been declared hostile, in my view, the prosecution has not been able to prove its case against the accused-Appellant beyond all reasonable doubts.

15. In the result, I hold that the prosecution has not been able to establish the

charge against the Appellant beyond all reasonable doubts and therefore, the judgment against the Appellant passed by the trial court cannot be sustained.

16. In the result by giving benefit of doubt, this appeal is allowed and conviction and sentences passed by the trial court against the Appellant are hereby set aside. The Appellant who is on bail is discharged from the liability of his bail bonds.