
(2007) 02 JH CK 0007
In the Jharkhand High Court

Gour Chandra Mandal

APPELLANT

Vs

State of Bihar now Jharkhand and Another

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1988 — Section 5

Citation : (2007) 02 JH CK 0007

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The sole appellant was put on trial to face charges u/s 161 of the Indian Penal Code as well as u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act on the allegation that the appellant being a public servant demanded and accepted illegal gratification of Rs. 100/- as reward for doing official act. The trial court having found the appellant guilty for the said charges sentenced him to undergo rigorous imprisonment for one year each for the offence u/s 161 of the Indian Penal Code as well as u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. He was further sentenced to pay a fine of Rs. 500/- u/s 161 of the Indian Penal Code and in default to undergo for further rigorous imprisonment for three months. Both the sentences were ordered to be run concurrently.

2. The complainant Batul Singh (P.W.8) while was working as a Miner Loader during the year 1986-87 in the South Govindpur Colliery, Area III, BCCL, Dhanbad suffered Tuberculosis and hence he was referred to TB Ward on 13.10.1986. Subsequently, he was admitted to Central Hospital, TB Ward, Dhanbad on 16.10.1986 under registration ticket (Bed Head Ticket) (Ext.1) and was under the treatment of Dr. Kamla Kant Ojha (P.W.1). Subsequently, Dr. S.K. Mandal, Head of the Department of the TB Ward advised P.W.1 to refer the case

of the complainant Batul Singh to Ram Krishna Mission Sanatorium, Ranchi and accordingly, endorsement to that effect was made on 26.11.1986, vide. Ext.1, but he was not sent to the Sanatorium as necessary document was not forwarded by the appellant Gour Chandra Mandal, who was working as Ward Boy in the TB Ward of Central Hospital, Dhanbad, though he was repeatedly requested by the complainant Batul Singh to do so but said Gour Chandra Mandal always asked for Rs. 100/-for doing needful. Admittedly, the complainant told him that he will make complaint to Dr. Mandal to which appellant replied that he is least bothered for that. Thereafter the complainant again made request but the appellant did not budge and instead of doing needful the appellant asked the complainant to go home and bring money and then by conveying to the appellant that he is going home for taking money, the appellant came to the office of the Superintendent of Police, CBI, Dhanbad and submitted a written complaint (Ext.9) on 7.1.1987, which was referred to Sub-Inspector of Police, CBI, Dhanbad S. Sharma (not examined) for its verification, who on its verification found the allegation, prima facie, true and consequently submitted verification report (Ext. 16) to the Superintendent of Police, CBI, Dhanbad. Thereupon first information report (Ext.11) was drawn and a case was registered. Thereafter the matter was endorsed to one Lakhi Prasad, Sub-Inspector of Police, CBI, Dhanbad for investigation, who constituted a team consisting of himself, L.M. Mishra Inspector, CBI, Dhanbad (not examined), S. Sharma, Sub-Inspector, CBI, Dhanbad (not examined), U.K. Rai, FC, CBI, Dhanbad (not examined), J. Rajak, FC, CBI, Dhanbad (not examined) and also two independent witnesses, namely, R.K. Dubey (P.W.2) and S. Prasad (P.W.3). After doing formalities of pre-trial exercise, preliminary memorandum (Ext. 12) was drawn. In the said exercise two currency notes of the denomination of Rs. 50/- each produced by the complainant were treated with phenolphthalein powder and were given back to the complainant after its numbers were noted in the memorandum with the instruction to him as well as to the witnesses to hand over the same to the appellant only when he makes demand and advised him to give signal on acceptance of the money by wiping his spectacle with Mufflar. On 8.1.1987 at about 11.20 A.M. members of the raiding party as well as aforesaid two independent witnesses and also the complainant came to the TB Ward, Central Hospital, Dhanbad and took position as per the instruction and the complainant (P.W.8) and the shadow witness S. Prasad (P.W.3) entered into the room where the accused was present and as soon as the appellant noticed the presence of the complainant over there, he asked whether he has brought money and when he replied in positive the appellant asked for money and said that now his work would be done and then two currency notes treated with phenolphthalein powder were handed over to the accused which he accepted with the right hand and then kept it in the left pocket of his shirt, on signal being given other members of the trap team including Lakhi Prasad (P.W.10) reached there and caught hold of both the hands of the accused, upon which he became nervous and then tainted money was recovered from the pocket, number of which was same as has been mentioned in the preliminary memorandum and thereafter phenolphthalein test

was undertaken whereby both the hands of the appellant were dipped in a solution kept in two containers which turned to pink and that apart, inner lining of the pocket of the shirt was also subjected the same test which also gave positive result. Thereafter both the hand wash of the appellant as well as wash of inner lining of the pocket were kept in three different containers and were sealed. The tainted money recovered from the possession of the appellant was also sealed and all the members of the raiding party signed over it. After the formalities of the trap were over, memorandum of recovery (Ext. 13) was prepared and arrest of the appellant was effected. In course of investigation, those three samples were sent to Director, Central Forensic Science laboratory, Calcutta under forwarding letter. On being examined the samples of hands wash and wash of inner lining of the shirt were found containing Sodium Carbonate solution and Sodium Phenolphthalein. Accordingly, Expert Report (Ext. 10) was submitted.

3. After completion of investigation and after sanction of the prosecution was accorded under Ext.8 by P.W. 6, charge sheet was submitted and accordingly, cognizance of the offence was taken up.

4. In course of trial, the prosecution in order to establish the charges examined as many as ten witnesses. Apart from the complainant (P.W.8) as well as shadow witnesses, namely, R.K. Dubey (P.W.2) and S. Prasad (P.W.3), one Dr. Kamlakant Jha (P.W.1) was examined on the point that the complainant was treated at TB Ward at Central Hospital, Dhanbad. Investigating Officer Lakhi Prasad was examined as P.W. 10.

5. After closure of the prosecution case the appellant was questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances appearing against him to which he has simply denied. However, the trial court placed implicit reliance upon witnesses, particularly complainant and the shadow witnesses found the appellant guilty and sentenced him as aforesaid.

6. Being aggrieved with that the appellant has preferred this appeal.

7. Learned counsel appearing for the appellant submits that though the complainant (P.W.8) in his evidence has supported the case as has been made out in the complaint (Ext.9) but in his cross-examination he has categorically stated that the appellant was given Rs. 100/- for purchasing medicine for him and in that view of the matter it can never be said that the appellant demanded and accepted the money as illegal gratification as reward for doing official act, but the court below did not attach much importance to that though the said version was of none other than the complainant himself. Further submission is that the appellant though was posted as Ward Boy, but he was never concerned with the matter or handling the matter relating to reference of the case of the patient to other Hospital or Sanatorium and thereby question of demanding money never arose and in that view of the matter order of conviction and sentence as recorded by the trial court is bad and is fit to be set aside.

8. As against this, learned Counsel appearing for the CBI submits that this is a case where prosecution have succeeded in proving the demand being made by the appellant as reward for doing favour to the complainant which he accepted and was caught red handed by trap team and Rs. 100/- accepted as gratification was recovered which was subjected to phenolphthalein test giving positive result and in that event prosecution is not supposed to prove further, rather onus was upon the appellant to disprove that he did not accept the money as illegal gratification which the appellant has failed to discharge.

9. Having heard learned Counsel appearing for the parties and on perusal of the record I do find that as per the complainant (P.W.8) he was suffering from Tuberculosis and was being treated on South Govindpur Colliery from where he was referred to TB Ward of Central Hospital, Dhanbad and after being admitted he was under the treatment of Dr. Kamla Kant Ojha (P.W.1) and as per Dr. Kamla Kant Ojha (P.W.1) he on the advise of Dr. S.K. Mandal, Head of the Department of TB Ward referred the case of the complainant to Ram Krishna Mission Sanatorium, Ranchi which would be evident from the endorsement made to that effect on 26.11.1986, vide Ext.1 (bed head ticket) but as per the complainant he could not be removed to Sanatorium as necessary documents were not forwarded by the appellant, though complainant made request to him repeatedly for doing needful. It would be pertinent to point out here that a stand has been taken on behalf of the appellant that appellant was not at all concerned with that matter but this is not acceptable in view of the testimony of P. W.1, who in his evidence has categorically stated that case of the complainant had been referred to Ram Krishna Mission Sanatorium. Further he has testified in his cross-examination that it was the appellant who was supposed to take all the relevant papers from the sister and then hand over it to the nurse for needful. There appears to be no reason at all for not accepting this version of the Dr. Kamla Kant Ojha (P.W.1). Doctor posted in T.B Ward itself in the Central Hospital, Dhanbad.

10. Going further in the matter I do find that according to P.W.8 when the appellant did not agree to do needful without taking money, P.W.8 came to CBI office and lodged the complaint (Ext.9) and the allegation made therein having been found true on verification a trap team was constituted consisting of two independent witnesses, namely, R.K. Dubey (P.W.2) and S. Prasad (P.W.3) and the trap team laid the raid whereby S. Prasad (P.W.3) stood near the door of the room where complainant (P.W.*0 approached to the appellant who asked for money from the complainant which is evident from the evidence of P.W.8 and this fact finds support from the evidence of P.W.3 who has testified that he was over heard the conversation took place in between appellant and P.W.8 as he was there in near vicinity whereby appellant was asking for money from the complainant. Further as per P.W.8 on demand Rs. 100/- was given to the appellant and thereafter when signal was made by P.W.3 other members of the trap team reached there and recovered the money from the left hand side pocket of the shirt of the appellant and thereafter hands as well as inner lining of the

pocket was subjected to phenolphthalein test which gave positive result. Apart from the complainant the shadow witnesses, P.W.2, P.W.3 as well as P.W.10 the Investigating Officer has corroborated the version of the complainant. Nothing seems to have been elicited from any of them so as to create slightest doubt on their versions. Thus, I do find that the prosecution has been able to establish beyond any reasonable doubt that the appellant accepted money on demand as reward for doing official act. It would be relevant to note here that the complainant (P.W.8) though in his examination-in-chief supported the case of the prosecution in entirety, but course of cross-examination at one point of time he has said that Rs. 100/- was given to the appellant for purchasing medicine for him but this version has been disbelieved by the court below and in my view, the court below for the reasons stated therein has rightly disbelieved. It may be reiterated that after the examination-in-chief was over, the case was adjourned from time to time for cross-examination and during that period the complainant seems to have been gained over by the appellant and, therefore, such statement was given in the cross-examination. But that statement in no way does effect the case of the prosecution as it was the complainant who had lodged the complaint (Ext.8) making allegation against the appellant regarding demand of illegal gratification which was acted upon and tainted money was recovered. On the point of recovery, I may indicate that according to the case of the prosecution when the appellant accepted the money both the hands as well as inner lining of the pocket of the shirt was subjected to phenolphthalein test and according to witnesses, P.W. 2, P.W.3, P.W.8, P.W.10, solution in which hands and the inner lining of the shirt were dipped got turned pink. Those solutions were separately collected in samples. These three samples as well as one more sample prepared during pre-trap exercise were sent for Chemical examination which was tested and according to P.W.9 solution contained in all four bottles contained Sodium Carbonate and Sodium Phenolphthalein and this piece of evidence fully corroborates the case of the prosecution regarding recovery of the tainted money from the possession of the appellant.

11. Thus, I do find that prosecution has been able to establish with clinching evidences that appellant on demand accepted the money as reward for doing official act and the said tainted money was recovered from his possession and hence the trial court has rightly convicted the appellant.

12. Coming to the point of sentence, it appears that appellant has suffered rigour of the protracted trial and suffered mental anxiety during course of trial and also during pendency of the appeal for about 17 years and has also remained in custody for more than two months and also keeping in view the facts and circumstances of the case, in my view, ends of justice would be met if the appellant is sentenced for a period already undergone in custody and to pay a fine as has been imposed by a the trial court.

13. With the aforesaid modification in the order of sentence, this appeal is dismissed.