
(2016) 01 GAU CK 0001
In the Gauhati High Court
Case No : Crl.A. No. 94 of 2013

Hitendra Chandra Chakraborty

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7

Citation : (2016) 3 GauLJ 602 : (2016) 4 GauLR 558 : (2016) 2 GauLT 650

Hon'ble Judges : Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : B.J. Dutta, Addl. PP, for the Respondent

Final Decision : Allowed

Judgement

Paran Kumar Phukan, J. - This appeal is directed against the judgment and order dated 26.03.2013 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 02/2011 convicting the accused appellant under Section 7 of the Prevention of Corruption Act and sentencing him to Rigorous Imprisonment for 3 (three) years 6 (six) months and to pay fine of Rs. 10,000/-, in default, to Rigorous Imprisonment for 6 (six) months.

2. The case of the prosecution in brief is that the accused appellant while functioning as Medical and Health Officer in the Central Jail, Guwahati, demanded illegal gratification of Rs. 1500/- from the informant for providing medical treatment to the ailing brother of the informant who was detained in the jail in connection with a case. Out of the aforesaid amount, Rs. 500/- was already paid to the accused appellant by the informant and instead of paying the balance amount of Rs. 1000/-, the informant decided to bring the matter to the notice of the Vigilance and Anti Corruption Department and accordingly, an FIR was filed on 19.10.2002 with the Superintendent of Police, Vigilance and Anti Corruption Department.

3. On receipt of the FIR, a case was registered and trap was laid to catch the

accused appellant. At the relevant time, the accused appellant was residing in his quarter inside the jail campus. A trap team was constituted comprising, Sri Kamaleswar Dutta, Additional Superintendent of Police, Sri Jagadish Sarma, Inspector of Police, Sri Ramani Das, Constable and Makibur Rahman Talukdar, Constable. The case was endorsed to Police Inspector, Jamiruddin Laskar to execute the trap and to apprehend the accused appellant in his residence at the time of taking bribe from the informant Upen Baruah. Accordingly, pre-trap memorandum was prepared, necessary chemical was used to trap the hundred rupee notes given by Upen Baruah to the trap team and as per plan, informant Upen Baruah and his colleague, Dilip Sarma went to the residence of the accused appellant and delivered the envelope containing the ten numbers of hundred rupee currency notes treated with phenolphthalein powder. Immediately, thereafter, the trap team searched the person of the accused appellant in presence of Executive Magistrate, Sri Utpal Sarma and recovered the currency notes from his trouser pocket. The accused appellant was taken into custody and all formalities were observed. On completion of investigation, Charge-Sheet was laid against the accused appellant under Section 7 of the P.C. Act.

4. In order to prove the charge, the prosecution examined as many as 8 witnesses. The accused appellant in his defence statement denied having received any bribe from the informant and in support of his case, he examined one witness.

5. The learned Special Judge, Assam, on completion of the trial, found the accused appellant guilty and convicted and sentenced him accordingly as stated above. Hence, this appeal.

6. Heard Mr. K. Agarwal, learned counsel appearing for the accused appellant and Mr. B.J. Dutta, learned Additional Public Prosecutor, Assam.

7. Mr. Agarwal, learned counsel for the accused appellant, submitted that there is no evidence that the accused appellant had demanded bribe from the informant for providing treatment to his brother.

8. Inviting my attention to the evidence of PW6, the informant of this case, it is submitted that the informant himself disowned making the FIR and there is no evidence that the accused appellant had demanded money for treatment. His evidence is that his younger brother, Kulen Baruah was in Guwahati Jail in connection with a case and for his release, he approached one Hridayananda Kalita and this Hridayananda Kalita scribed the FIR. He told him to deliver a letter to the jail doctor and one day, he was taken to an office by Hridayananda Kalita for having discussion with police officers and thereafter, he was taken to the residence of jail Doctor in the jail premises. He also stated that he was accompanied by a civilian who had shown him the residence of the jail Doctor and when he rang the calling bell, the Doctor came out and after delivering the envelope given to him by Hridayananda Kalita, he came back and informed Kalita that he had delivered the letter to the Doctor. He has been declared hostile by

the prosecution as he resiled from his earlier version given before police. In cross-examination, he stated that the ejahar, Ext. 7 was written by Hridayananda Kalita, who also accompanied him to the police officer and also to the residence of the accused appellant.

9. The version of the informant at whose instance the prosecution was launched is completely different from his earlier version and before the Court, he has put forwarded a different story. He appears to have delivered a letter to the Doctor on being asked by Hridayananda Kalita. There is also nothing in his evidence to show that the accused appellant at any point of time made any demand of money from him for treatment of his brother. Hridayananda Kalita, who scribed the FIR could not be examined, as he was not found in the given address.

10. PW6 in his evidence even denied having met the doctor at any point of time and he also denied that his brother was suffering from any ailment. His positive evidence is that he approached Hridayananda Kalita, who was known to him for release of his brother from jail and Hridayananda Kalita asked him to deliver a letter to the Doctor, i.e., the accused appellant. He categorically stated that while handing over the envelope, he informed the Doctor that there was a paper inside and he asked him for getting his brother released from jail. His evidence also reveals that this Hridayananda Kalita was once in jail and the Doctor refused to give him a certificate and he wanted the doctor to be implicated in a false case.

11. On scrutiny of the evidence of PW6, I have found that he not only turned hostile but has given a totally different version and even denied having approached the Doctor for treatment of his brother. Rather, his evidence shows that it was Hridayananda Kalita, who wanted to implicate the Doctor in a false case and at his instance, the trap was laid and FIR was filed. The other independent witness PW7, Dilip Sharma also turned hostile and he also did not support the prosecution. He admitted having put his signature in some documents given to him by the police officials but he denied having any knowledge regarding the occurrence.

12. Mr. Agarwal, learned counsel appearing for the accused appellant strenuously submitted that since there was no evidence of demand and payment of gratification and since the informant disowned the FIR, the conviction of the appellant is not sustainable in law. He referred to the decision of the three judges Bench of the Apex Court in B. Jayaraj v. State of A.P. reported in (2014) 13 SCC 55, wherein, the Apex Court held as follows:

"8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any

demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

13. The facts of the above case is similar to the facts of the present case and the decision is sparsely applicable in this case also. When PW6, the informant, Upen Baruah himself had disowned that he had brought allegations against the Doctor in the FIR filed before police and there is no other evidence that the Doctor had made any demand, it cannot be held with certainty from the evidence of the police officials (trap witnesses) that the Doctor demanded bribe and the bribe money was recovered from his possession.

14. In *M.R. Purushotham v. State of Karnataka* reported in (2015) 3 SCC 247, the Apex Court has held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)(d) of the P.C. Act and the conviction and sentence imposed on the appellant are liable to be set aside.

15. In the present case, from the evidence of the police officials including the Executive Magistrate, there is no doubt that a trap team was constituted to trap the accused appellant while taking bribe. It is also satisfactorily established that they have observed all the formalities to be followed in organising the trap. Recovery of the currency notes was also made from the house of the accused. In his defence statement, the accused had stated that the informant visited his house and handed him an envelope and informed that those were medical papers of his brother who was in jail and he kept the envelope on a wooden almirah in the room. After about 10/15 minutes, his door bell rang again and when he came out, a person asked him to hand over the envelope and then only he came to know that it was a police party. He had no knowledge that there were currency notes inside the envelope. In support of his statement, he examined his wife as DW1 who also deposed that the envelope was kept by her husband on the top of the wooden almirah and she did not ask him about its contents. There was nothing in his back pocket.

16. On consideration of the totality of the evidence on record, more particularly, the evidence of the informant and in the light of the observations of the Apex Court in the cases referred to above and from all my discussions above, I am of

the considered view that the conviction and sentence imposed on the appellant by the learned Special Judge are liable to be set aside. Accordingly, the appeal is allowed. The conviction and sentence of the accused appellant under Section 7 of the P.C. Act are set aside and he is acquitted of the charge. The bail bond, if any, stands discharged. Send down the LCR along with a copy of this judgment to the learned Court below for information and necessary action.