
(2020) 08 MP CK 0196
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 1929 Of 2020

Mahesh Verma

APPELLANT

Vs

State of M.P. Through SPE Lokayukta, Indore

RESPONDENT

Date of Decision : 19-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B
Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 145, 313

Citation : (2020) 08 MP CK 0196

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Amit Bhatia, R.S. Raghuvanshi

Final Decision : Allowed

Judgement

Also heard on I.A. No.4618/2020, an application for suspension of a custodial sentence through video conferencing.

Being aggrieved by the judgment dated 24.12.2019 passed by 1st Addl. Sessions Judge & Special Judge (Prevention of Corruption Act), Indore whereby the appellant has been convicted for the offence/s punishable u/s. 13(1)(d) read with 13(2) of the Prevention of Corruption Act and sentenced to undergo 4 years RI and to pay fine of Rs.7,000/- with default stipulation, the present appeal has been filed.

As per prosecution story, the complainant - Sandeep Ojha (PW-2) submitted a written complaint dated 19.9.2014 (Ex. P/2) in the office of Special Police Establishment (SPE) Lokayukta, Indore that his brother Pankaj Ojha is the owner of Plot No. 116, Teachers Colony, Indore which he has purchased by way of agreement to sale from Kamal Kishore Solanki and Kirtibala Solanki. Now, Kamal Kishore Solanki is disputing the agreement to sale and claiming his ownership. On his complaint, proceeding u/s. 145 of Cr.P.C. has been initiated against him and his brother Pankaj Ojha which is pending before the Court of Sub Divisional

Magistrate (SDM), Indore. On 19.9.2014, he met Lalit Joshi, the Reader of SDM Court to enquire about the case, but he demanded Rs.50,000/- in presence of present appellant - Peon for getting the case decided from SDM in their favour. He gave the mobile number of the present appellant for further talk. Since he was not willing to give the bribe and wanted them to be caught red-handed, hence he filed the complaint.

The SPE Lokayukta handed over the complaint to Inspector U.R. Baman (P.W.8) for further investigation. In order to verify the genuineness of the allegations, he handed over the voice recorder to the complainant to record the conversation about the demand of bribe and also sent a shadow witness Ravindra Tripathi.

The complainant gave a call to the present appellant and recorded the conversation in the memory card. After verification of demand of bribe by the present appellant, 'Rojnamcha' (Ex. P/36) was registered for the offence u/s. 7 of Prevention of Corruption Act and Section 120-B of the IPC. Thereafter, a criminal case under Crime No. 426/2014 (Ex. P/39) was registered in Police Station SPE Lokayukta, Indore. Inspector U.R. Baman in presence of two 'Panch' witnesses heard the conversation recorded in the memory card of the mobile and directed the complainant to arrange the currency notes. The complainant brought currency notes of Rs.5,000/- and handed over to the Investigating Officer (IO). The IO applied the phenolphthalein powder to the currency notes and kept in the pocket of the complainant. After completing the remaining process, the trap team reach the premises of Collectorate. The complainant gave a phone call to the appellant and he called him at the tea-shop in the Collectorate premises. The appellant came there and demanded a bribe from the complainant. After handing over the tainted money, the complainant indicated the members of the trap team. Inspector U.R. Baman immediately reached there and gave his introduction and caught hold the hands of the appellant. After search, the tainted money was recovered from the pocket of the appellant. His hands were washed in the solution and colour of the solution turned into pink. After completing the remaining process, the trap team reached to the office of SDM and recovered the file of Case No.518/2013 from the Almirah of office of SDM. The Reader of the SDM Court - Lalit Joshi was also made accused. Both the accused were arrested and released on bail. The seized articles were sent for chemical analysis. After completing the investigation, the entire case was handed over the Inspector Anil Singh Chouhan who recorded the statements of witnesses. After completing the investigation, sanction for prosecution of Lalit Joshi was obtained. Since the appellant was already removed from service, therefore, there was no need to obtain such sanction for his prosecution. Thereafter, challan was filed. Both the accused denied the charges and pleaded for trial.

In the statement recorded u/s. 313 of Cr.P.C. accused - Lalit Joshi pleaded that he never demanded the bribe directly or through the present appellant. He has no authority to interfere into the case. He was only a Reader of the SDM Court to present the file before the SDM. He further stated that Lokayukta Police in

connivance with SDM has falsely implicated him. Likewise, the present appellant also denied the charges and submitted that he was temporarily posted in the office of SDM and he never demanded or accepted the bribe money.

To prove the charges, the prosecution examined 10 witnesses and got exhibited 66 documents vide Ex. P/1 to P/66 and also produced the seized articles.

After appreciating the evidence came on record, learned Special Judge vide judgment dated 24.1.2019 has acquitted the accused - Lalit Joshi, but convicted and sentenced the present appellant, as aforesaid. Hence the present appeal before this Court.

Shri Amit Bhatia, learned counsel appearing for the appellant, submits that the appellant as well as co-accused Lalit Joshi both were falsely implicated in the case in order to save the SDM. The appellant was temporarily working as Peon in the office of SDM. He was not having any authority to give undue favour to the complainant. He has also lost his job and he is in jail since last more than one year and there is no likelihood of hearing of this appeal in the near future. The complainant in his cross-examination has admitted the Peon has no role to play in the Court of SDM. In Para 61, he has admitted that the SDM D.K. Nagendra has demanded Rs.50,000/- for deciding the case in his favour. There was no demand by the present appellant. He, therefore, prays that the jail sentence be suspended and he be released on bail.

On the other hand, learned counsel for the respondent opposes the prayer by submitting that the trap was successful. The appellant accepted the bribe and he has failed to give any explanation in respect of tented money found in his pocket. The complainant has not turned hostile and fully supported the prosecution case. Minor omissions and contradictions in the statements of the witnesses are liable to be ignored. The appellant has failed to establish the defence set up by him. He called the complainant by giving his location to him for taking the bribe money hence there cannot be any case of false implication. There is no likelihood of acquittal in this appeal. Learned Special Judge has rightly convicted the appellant and he is not entitled to be released on bail otherwise wrong message would go to the public.

That appellant has not been convicted under section 120B of the Cr.P.C. and co-accused has been acquitted by the special judge. In the case of B.Satyanarayan Murthy vs. Dist.Insp.Of Police & Anr reported in (2015) 10 SCC 152 also the Apex Court has held that mere recovery itself cannot prove the charge of bribe unless it was proved that the accused accepted the money knowing it to be a bribe. If two views are possible, the accused must be given the benefit of doubt. In the case of V.Sejappa vs State of Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150 again the Apex Court has reiterated that mere recovery of money was not enough to draw the presumption. The Appellant has raised some arguable points in this appeal which requires consideration in detail. It is correct that there is no possibility of hearing of this appeal in the near

future. Out of four years' sentence, the appellant has already undergone more than one year sentence. He is already out of employment and in this epidemic period he has to look after his family and keeping him into the custody for another few years would not serve any purpose.

The Apex Court in the case of Vedkumar Pandya vs. State of M.P. (SLP No.6560/2019 decided on 16.09.2019) has suspended the sentence to the appellant under the PC Act only on the ground that he is in custody since last ten months and there is no likelihood of early disposal of the appeal in near future. The entire order is reproduced below:-

The petitioner has been in custody since 29th November 2018. Considering the fact that the sentence is only for four years and disposal of the appeal is likely to take time, having regard to the pendency of cases, we deem it appropriate to direct that the petitioner be released on bail in Special Case No.29 of 2016 dated 29th November, 2018 on conditions to the satisfaction of the Special Judge (Prevention of Corruption Act), Indore. The special leave petitions are disposed of.

Keeping in view of the grounds raised in the appeal, the application is allowed and it is directed that subject to deposit of the fine amount with the trial Court (if already not deposited) and furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one solvent surety in the like amount to the satisfaction of the trial Court for his appearance before the Registry of this Court, the execution of custodial part of the sentence shall remain suspended till the final disposal of this appeal. The appellant after being released on bail shall mark his presence before the Registry of this Court on 11.10.2021 and on all such subsequent dates, as may be fixed in this behalf by the Registry during the pendency of this appeal.

Before releasing the appellant from the custody, the Jail Authorities are directed to medically examine him in order to rule out the possibility of COVID-19 infection and shall comply with the direction given by the Apex Court in Writ Petition No.01/2020.

List the matter for final hearing in due course.