

(2011) 04 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal A. No. 475/ of 2000 (Jabalpur)

Maheshwari Prasad (Since Dead)

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 4(1), 5(1), 5(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2011) ILR (MP) 2039

Hon'ble Judges : Vimla Jain, J; Rakesh Chandra Mishra, J

Bench : Division Bench

Advocate : Amit Verma, for the Appellant; Aditya Adhikari, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.—These appeals, though arise out of two different trials, are interconnected as relating to series of offending acts so connected together as to form the same transaction.

2. The first one, registered as Cri. Appeal No. 475/2000, has been preferred against the judgment - dated 2/2/2000 passed by the Special Judge (under the Prevention of Corruption Act, 1988), Tikamgarh in Special Case No. 2/1992 and the second one, numbered as Cri. Appeal 478/2000, is directed against judgment passed on the same day by the same Judge in Special Case No. 3/ 1992. In each one of the cases, the Appellant Maheshwari Prasad (since dead) was convicted and sentenced as under -

Convicted under Section Sentenced to

7 of the Act undergo R.I. for 3 years and to pay fine of Rs. 500/ - and in default to suffer S.I. for 1 month.

13(2) of the Act undergo R.I. for 3 years, and to pay fine of Rs. 500/ - and in default to suffer SI for 1 month.

with the direction that the jail sentences shall run concurrently.

3. For the sake of convenience, Special Case Nos. 2/1992 and 3/1992 shall be referred to as the first case and the second case respectively and the witnesses as well as the exhibited documents shall be referred to by placing "/1" or "/2" (as the case may be) after their respective numbers in each case.

4. The prosecution story, in short, may be narrated thus -

(i) At the relevant point of time, the Appellant Maheshwari, posted as Patwari of Halka No. 22, was residing as tenant in Atari (the room on the roof of the house) of Thakurdas Yadav's house located in Kundeshwar. Agricultural lands belonging to Rajaram (PW8/1 and PW10/2), the complainant in the first case and Mukundi Patel (PW9/2), the complainant in the second case, were situated in Village Pahari Tilwaran, that formed part of the Halka.

(ii) On 22/7/1987, Rajaram submitted an application (Ex.PIO/1) in the Tahsil office at Tikamgarh for supply of certified copies of Khasra and Khatauni for the year 1985 to 1987 in respect of his lands bearing Khasra Nos. 549 and 550. On the same day Mukundi also filed an application (Ex.P10/2) for supply of certified copy of Khasra entries pertaining to lands standing in the name of his father Ajju and bearing survey Nos. 868 and 1636 to 1642. Copyist Hazmatullah Beg (examined as PW4 in both the cases), as per the orders of the Tahsildar, forwarded the applications to the Appellant, by way of two different letters (Ex.P8/1 and 5/2), containing an identical direction to prepare copies of the revenue records and to submit the same in the copying section. However, the Appellant demanded a sum of Rs. 100/- from Rajaram and that of Rs. 50/- from Mukundi as illegal gratification for the purpose and did not prepare the copies.

(iii) On 24/7/1987 at about 8 a.m., Rajaram submitted a complaint (Ex.P-2/1) before H.R.P. Choudhari (PW9), posted as Inspector in the office of SPE-Lokayukta at Sagar, who had come to Tikamgarh in connection with a Court case, indicating his intention to get the Appellant caught red handed while accepting the bribe.

(iv) On 24/7/1987 only at about 9.30 a.m., Mukundi also presented a complaint (Ex.P-9/2) before the Inspector setting out his grievance against the Appellant and expressing willingness to get the Appellant trapped while receiving the illegal gratification.

(v) The Inspector, however, requested Deputy Superintendent of Police, SPE (Lokayukt), Sagar, by way of letters (Ex.P-15 in both the cases), to come along with the police party for laying the trap. The DSP, in turn, directed H.R.P. Choudhari to arrange the trap and also deputed Inspectors S.P. Shukla, M.K. Gautam, Head Constable Indramani and Constables Dwarka Prasad and Purushottam for the purpose. They immediately started from Sagar in a Government Vehicle, bearing registration No. CPZ-4391, and reached Tikamgarh on 24/7/1987 only.

(vi) On 25/7/1987, H.R.P. Choudhari completed necessary formalities for laying the trap in presence of Panch witnesses namely R.B. Prajapati (PW3 in both the cases) and Dalchand Patel (PW7/1 and PW2/2), who were posted respectively as Deputy Collector and Asstt. Director of Agriculture, at Tikamgarh only. He took into possession 7 currency notes of Rs. 10/ -, one currency note of Rs. 20/ - and two currency notes each in the denomination of Rs. 5/ -, brought by Rajaram. These currency notes, after being duly treated with phenolphthalein, were kept in the right pocket of Pant worn by Rajaram with the assistance of Constable Purushottam. He was further instructed to give signal after giving the tainted money to the Appellant by scratching his head. The pre-trap proceedings that commenced from 6.30 a.m. were completed by 7.15 a.m.

(vii) At about 7.25 a.m., at the time when the trap party was about to start for house of the Appellant, Mukundi (PW9/2) also arrived at the Circuit House and submitted an amount of Rs. 50/ - in the form of 2 currency notes in the denomination of Rs. 20/ - and one currency note in the denomination of Rs. 10/ -. Constable Purushottam smeared a thin layer of phenolphthalein on the notes and put the same into the shirt pocket of Mukundi, who was further asked to give signal after handing over the currency notes to the Appellant by removing towel from his head.

(viii) After observing the other pre-trap formalities, Inspector H.R.P. Choudhari along with both the complainants and the police personnel except Purushottam, started for the Appellant's residence.

(ix) At about 9 a.m., the trap party reached Kundeshwar and the Jeep was parked at a distance from the house of Thakurdas. Both the complainants were deputed to ascertain presence of the Appellant in the house. At about 9.30 a.m., Rajaram informed that he had been directed by the Appellant to come a little later as some other persons were sitting in the Atari. At about 10.30 a.m., Mukundi came out of the room and, at this point of time only, Rajaram went inside. After a while, he came out of the room and gave the appointed signal.

(x) Immediately thereafter, the raiding party led by H.R.P. Choudhari rushed to the Atari and as per the information given by Rajaram and Mukundi, the tainted currency notes handed over by them, were respectively recovered from the shirt pocket of the Appellant hanging on a peg and a black bag lying near the Appellant. Hands of both the complainants, the Appellant and panch witnesses R.B. Prajapati and D.C. Patel, who had taken out the currency notes from the bag and shirt pocket of the Appellant respectively, were washed with the solution of sodium carbonate that turned pink. The notes were counted and their numbers were tallied with the corresponding details recorded in the trap panchnama. Samples of the solution used for conducting Phenolphthalein test were duly seized and forwarded to FSL, Sagar. The reports (Ex.P-15/1 and 16/2) also indicated presence of phenolphthalein.

(xi) After completing the investigation and obtaining sanction (Ex.P-21 in each

case) from the Secretary, Department of Law and Legislative Affairs, Govt. of M.P. Bhopal, the charge-sheets were submitted before the Special Court.

5. The Appellant was charged with the offences punishable u/s 161 of the IPC and Sections 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947 and in the alternative for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. He abjured the guilt and pleaded false implication. According to him, he neither demanded nor accepted the bribe amount from any one of the complainants.

6. To bring home the charges, the prosecution examined as many as 11 witnesses in the first case and 13 witnesses in the second case. No evidence was led in defence. Upon consideration of the entire evidence brought on record, learned trial Judge, for the reasons recorded in the impugned judgments, proceeded to convict the Appellant for the offences punishable under Sections 7 and 13(1)(d)(i) read with Section 13(2) of the 1988 Act, (which came into existence with effect from September 09, 1988, i.e. more than a year after the incident in question) and sentenced him as indicated hereinabove.

7. Legality and propriety of the convictions have been challenged on the ground of what has been termed as mis-appreciation of the evidence on record. In response, learned Public Prosecutor, while making reference to the incriminating pieces of evidence, has submitted that the convictions are well founded.

8. Before proceeding further, it may be observed that no serious dispute was raised as to the facts up to the stage of sending of the complainant's copying applications (Ex.P-10/1 and 10/2), to the Appellant. Against this backdrop, the prosecution evidence may be re-appreciated, in the light of the rival contentions, under the following sub-heads.

Evidence of the Complainants -

9. Even though the complainants Rajaram (PW8/1 and PW10/2) and Mukundi (PW9/2) reiterated the allegations contained in the applications (Ex.P2/1 and Ex.P9/2) before the Inspector on 24/7/1987, yet their evidence suffered from the under-mentioned contradictions and infirmities with reference to the contents of post-trap panchnama (Exhibited in original as Ex.P/4 in the first case) -

(i) According to Rajaram, he had made the complaint nearly 5 or 6 days after the filing of copying application and as per statement of Mukundi, he had preferred the complaint 4 days after the presentation of the copying application, whereas, as indicated already in both the cases, the complaints leading to trap were made on 24/7/1987 only 2 days after the date of presentation of the copying application.

(ii) The assertion made by both the complainants that the Appellant initially demanded a sum of Rs. 200/- from each one of them as illegal gratification but reduced the amount to Rs. 100/- and Rs. 50/- respectively did not find place in the respective complaints.

(iii) Mukundi categorically stated that the Appellant had kept the currency notes given by him in pocket of Jacket whereas as per the prosecution version his notes were recovered from a black bag. In his cross-examination, he further revealed that in response to the corresponding query, the Appellant had handed over the bribe amounts to the members of the trap party after taking out the same from pockets of his shirt and jacket, which were found hanging on a peg. Rajaram on being examined as PW8 in the first case on 18/10/ 1997 did not say a word about the black bag. As per his version, the bribe money given by Mukundi was also found in the same pocket of the Appellant's shirt where from the currency notes handed over by him were recovered. However, in his subsequent deposition recorded on 23/3/1998 he, as PW10 in the second case, made an improvement by stating that the Appellant had kept the tainted money given by Mukundi in a black bag.

(iv) In the first case, Rajaram asserted that Mukundi had not accompanied him from Circuit House to Kundeshwar. As per his version, after getting down from the jeep at Kundeshwar, he had gone all-alone to the residence of the Appellant and had not seen Mukundi there. However, in the subsequent statement recorded in the second case, he made improvements to bring his evidence in line with the prosecution version. Accordingly, he came forward to state that -

(a) the Vigilance Squad had also taken Mukundi along with him from Circuit House to Kundeshwar.

(b) in his presence only, Mukundi had passed on tainted currency notes worth Rs. 50/- to the Appellant who, in turn, had kept the same in a black bag.

(v) According to Mukundi, he had given money in presence of two or three persons belonging to Yadav caste who were sitting in the Atari and not in presence of Rajaram who was found standing outside the room. He further deposed that he did not give any signal but had personally informed Inspector H.R.P. Choudhary about passing of the bribe money.

10. Moreover, as admitted by the copyist namely Hazmatullah Beg (PW4 in both the cases), none of the complainants was required to contact the Appellant for preparation or supply of the copies applied for as the same were to be delivered in the Copying Section of Tahsil only. In such a situation, where the prosecution has failed to prove the circumstances necessitating the Appellant to demand the bribe, statements of the complainants were not worthy of acceptance (See. Jagdish Chandra Makhija Vs. State of Madhya Pradesh,

Evidence of the Panch Witnesses -

11. Statements of panch witnesses namely R.B. Prajapati (PW3 in both the cases) and D.C. Patel (PW7/1 and PW2/2) were also not in conformity with the corresponding contents of post trap Panchnama. R.B. Prajapati did not corroborate the version that it was he who had taken out the bribe money given by Mukundi from the black bag kept by the Appellant. As per his statement, he

was not able to remember as to whether the tainted currency notes allegedly handed over by Rajaram were recovered from the pocket of Appellant's shirt or from the bag. However, he categorically admitted that he had no occasion to touch the tainted money passed on by any one of the complainants to the Appellant. D.C. Patel, the other Panch witness, also did not support the corresponding recital of the Panchnama suggesting that it was he who had taken out the bribe money given by Rajaram from the Appellant's shirt pocket. In his statement as PW2/2 recorded on 8/10/1993, he clearly asserted that the currency notes said to have been handed over by the complainants to the Appellant were taken out from the shirt and the bag by M.K. Gautam (PW10/1 and PW12/2) whereas in his subsequent deposition recorded on 8/12/1994 in the first case, he, as PW7/1, disclosed that one of the members of the trap party had taken out the bribe money from the Jacket pocket of the Appellant whereas the other member had extracted the other set of currency notes from the pocket of Appellant's Kurta that was found hanging on a peg. In none of these statements, he corroborated the fact that he was also made to wash his hands with the sodium carbonate solution as he also had the occasion to touch the tainted money allegedly passed on by Rajaram to the Appellant.

12. In the light of these material inconsistencies, the evidence of panch witnesses also did not inspire confidence. Further, as these witnesses were not declared hostile; their evidence was binding on the prosecution (See. Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi), Thus, contradictory versions given by the panch witnesses also rendered the prosecution case doubtful.

Evidence of the Officer Leading the Raiding Party and other Members Thereof -

13. The complainants as well as the panch witnesses further admitted that the detecting officer had not asked them to give their personnel search before entering into the Atari. This admission assumes significance in view of the assertion made by H.R.P. Choudhary (PW9/1 and PW11/2) that Rajaram's currency notes were recovered from pocket of his shirt hanging on a peg whereas Mukundi's money was found in a black bag lying near the Appellant who, on the date of the incident, was aged about 57 years. The fact that the Appellant might have lost his agility could not be lost sight of. In the peculiar circumstances indicated above, the notes could have been inserted in the shirt pocket or placed in the bag without the consent or even knowledge of the Appellant (Salimkhan Sardarkhan Vs. State of Gujarat, relied on).

14. Inspector H.R.P. Choudhary was not able to explain as to why both the complaints were not forwarded by way of a single letter to the D.S.P. despite the fact that they were submitted on the same day within a short interval of 11/2 hours and only one police personnel viz. Constable Purushottam (PW6/1 and PW8/2) was employed for taking the same to Sagar.

15. Inspector M.K. Gautam (PW10/1 and PW12/2), Head Constable Indramani Mishra (PW2/1 and PW1/2) and Constable Purushottam (PW6/1 and PW8/2)

substantiated the facts as stated by Inspector H.R.P. Choudhary that-

(i) he had sent both the complaints (Ex.P-2/1 and P-9/2) along with letters of request (Ex.P-15 in both the cases) through Purushottam to the Dy. S.P., SPE (Lokayukt), Sagar.

(ii) DSP, while authorizing him to lay the trap, had deputed raiding party comprising of M.K. Gautam, Inspector S.P. Shukla, Indramani Mishra, Purushottam and constable Dwarka to render necessary assistance.

16. Nevertheless, DSP Jatav, who had granted the permission to conduct the trap, was not examined. Moreover, no documentary evidence either in the form of an entry in the Roznamcha of the office of SPE (Lokayukt) at Sagar or in any other register was tendered to corroborate the corresponding statements of M.K. Gautam, Indramani Mishra and Purushottam. It is relevant to note that none of the complaints bore signatures of the DSP. Above all, Mukundi, while asserting that he had stayed at the circuit house during the previous night only completely belied the statements of members of the trap party that he had arrived at the time when they were about to start for Kundeshwar after completion of usual pre-trap formalities pertaining to complaint made by Rajaram.

17. Moreover, the trap was also conducted in an unusual manner. A trap proceeding envisages secrecy and not a wide publicity (V. Venkata Subbarao v. State (2006) 13 SCC 305 referred to). Accordingly, involvement of two complainants in a contemporaneous raid was sufficient to make legality of the proceedings questionable.

18. Furthermore, the complainants as well as panch witnesses candidly admitted that the detecting officer had not observed the formalities of their personal search before entering the Atari. Search of the members of the search party, though not contemplated in the section, is done in practice so that there may not be suspicion as to plantation of the incriminating article (See. State of Bihar, etc. Vs. Kapil Singh, etc., . Non-observance of this formality assumed significance in view of the fact that bribe money was also not recovered from the person of the Appellant (Smt. Meena Hemke Vs. The State of Maharashtra, followed).

19. To sum up, on one hand, the incriminating evidence of the complainants and the Panch witnesses suffered from serious infirmities and on the other, veracity of the trap proceedings was also questionable in the light of the surrounding circumstances (See. State of T.N. v. Krishnan, (2002) 9 SCC 521 . In such a situation, the Appellant was entitled to benefit of doubt (Jai Ram Lakhe Vs. State of Punjab, relied on).

20. Since it could not be established beyond a reasonable doubt that the Appellant had obtained or accepted any illegal gratification pursuant to demand made by him by abusing his position as a public servant, the presumption u/s 4(1) of the Act of 1947 could not be drawn in any case (Sita Ram Vs. The State of Rajasthan, followed). As such, learned trial Judge completely misdirected

himself in holding the Appellant guilty of the offences under the Act.

21. In the result, the appeals are allowed. The convictions and consequent sentences are hereby set aside. Instead, the Appellant is acquitted of the offences. Fine amount, if deposited, be refunded to Ramkali Khare, wife of the Appellant.

22. A copy of this judgment be retained in the connected appeal.

Appeals allowed.