
(2008) 07 SC CK 0029

In the Supreme Court Of India

Case No : Criminal Appeal No. 1135 of 2008 (Arising Out of S.L.P. (Criminal) No. 1728 of 2004)

Raj Rajendra Singh Seth @ R.R.S. Seth

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 161

Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : AIR 2008 SC 3217 : (2008) AIRSCW 5442 : (2008) CLT 1085 : (2008) CriLJ 4306 : (2008) OLR 1085 : (2008) 10 SCALE 287 : (2008) 11 SCC 681

Hon'ble Judges : S. H. Kapadia, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : C.D. Singh and Merusagar Samantaray, for the Appellant; Rajiv Dutta Saket Singh and P. Parmeswaran, for the Respondent

Final Decision : Partly Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Jharkhand High Court. Two appeals were filed by the present appellant and one Nag Narain who was accused No. 2 questioning correctness of the judgment dated 4th December, 1997 and order of sentence dated 16.12.1997 passed by the Special Judge, CBI, Ranchi in R.C. case No. 15 of 1998. Learned Special Judge held the appellants guilty of offence punishable under Sections 120B and 161 of the Indian Penal Code, 1860 (in short the `IPC') and also u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (in short the `Act'). Each of them was sentenced to undergo RI for one year and to pay a fine of Rs. 5,00/- with default stipulation.

3. Prosecution version as unfolded during trial is as follows:

A written complaint was made to S.P. CBI, Dhanbad on 1.9.1985 by one Raju

Hadi, Safayi Mazdoor of Pathological Laboratory Area-9, BCCL, Dhanbad alleging therein that he had visited Chamodih Dispensary in connection with treatment of his father Sri Hublal Hadi who was examined by Doctor L.B. Sah, who referred him to Central Hospital, Dhanbad. Hublal Hadi was admitted in Bed No. 16 ENT Department of Central Hospital on 29.8.1985. Raju Hadi had been to the hospital on 31.8.1985 to see his ailing father and his ailing father complained of lack of proper treatment and he requested him to meet the concerned doctor, Raju Hadi ascertained that his father was under the treatment of Dr. R.R.S. Seth, the appellant. He requested Nag Narain to allow him to meet Dr. R.R.S. Seth and met Dr. R.R.S. Seth, who demanded a sum of Rs. 500/- from him for giving proper medical treatment to his father and also insisted that the amount be paid on 1.9.1985. The doctor also told Raju Hadi that in case he was not available in the hospital, he would pay the amount to his ward boy Nag Narain, who would pass the amount to him. Since Raju Hadi was not willing to make the payment of bribe amount to the doctor and ward boy, he lodged a complaint to the S.P. CBI, Dhanbad for taking necessary action.

On the basis of complaint, verification was made and on getting confirmation report, Sri R.C. Choudhary, Inspector, registered the complaint on 1.9.1985 and took up the investigation. The I.O. obtained the services of the two independent witnesses Devraj Prasad Sinha (PW-2) and Ved Prakash Pahuja (PW-1). These two independent witnesses reported before Shri R.C. Choudhary in the office of the CBI. Thereafter members of the CBI formed a raiding party and this party also assembled before him. After formal introduction of each other, the purpose of assembly was explained and practical demonstration regarding the purpose and use of phenolphthalein powder and chemical reaction with sodium carbonate was given in the immediate presence of two independent witnesses and the members of raiding party. After demonstration was over, the informant Raju Hadi was asked to produce a sum of Rs. 500/- (five G.C.C. notes of rupees one hundred denomination each) and he produced the same and numbers of these notes were noted down and these G.C.C. notes were tainted with phenolphthalein powder and handed over to Raju Hadi. The informant was directed to pay the amount to the accused only on demand. Instructions were also issued to the witnesses and the members of the raiding party to play their respective parts before and after trap. All these practical demonstrations were noted down and demonstration chart was prepared on which all the members of the raiding party made their respective signatures.

After pre-trap formalities, PW3 and Ors. members of the team including independent witnesses proceeded towards Central Hospital and PW2 was directed to shadow PW3 and to hear conversation in between the PW3 and the appellants. When they reached Central Hospital and went to the chamber of appellant Dr. Seth, chamber was found locked but informant met other appellant Nag Narain and PW3 paid the tainted money amounting to Rs. 500/- to Nag Narain who kept the same in his right pocket of his shirt and asked PW3 to proceed with him to the residence of Dr. Seth as he will give money in his presence and PW3

appellant Nag Narain proceeded from Central Hospital to the residence of Dr. Seth and PW2 and other members of the team were following them. When PW3 remained near the gate, other persons of the team remained outside the gate. On reaching burand of the house, appellant Nag Narain pressed call bell whereupon appellant Dr. Seth opened the door and came out and he gave money to him. In the meantime, PW2 who saw this came out of the gate and gave signal and thereafter members of the team pounced upon them introducing themselves as CBI officials and they caught Dr. Seth and recovered money from his possession, Nag Narain was also caught. Thereafter right hand of Dr. Seth was dipped in a solution which turned pink and this solution was kept in a bottle and sealed. Similarly, left hand of Dr. Seth was also dipped in another solution which also turned pink and this solution was also Kept in a separate bottle and sealed. At the same time, right hand of appellant Nag Narain was dipped in similar solution which also turned pink and was kept in a bottle and sealed. Similarly left hand of Nag Narain was also dipped in another solution which also turned pink and this solution was also kept in a bottle and sealed. His shirt was also dipped in a solution and that solution turned pink and that solution was kept in a bottle and sealed. Thereafter members of the team put their respective signatures on all the bottles which were sealed. Thereafter post-trap formalities were carried out at the premises of Dr. Seth, upon which all the members of the team put their respective signatures. Both Nag Narain and Dr. Seth were later arrested soon after recovery of money. After investigation of the case charge sheet in the case was submitted and cognizance of the case was taken and learned court below in course of trial recorded evidence of witnesses of both sides and marked exhibits of documents produced on behalf of both sides and ultimately came to a conclusion and held both the appellants guilty and accordingly, convicted them and sentenced them.

4. The two accused persons filed appeals before the High Court. Their stand was that there are a lot of contradictions in the evidence of witnesses. It was submitted that everything was pre-planned and conspiracy was hatched to falsely implicate the appellant. It was highlighted that so much preparations were made before trap, but it is not clear as to who recovered the money from the hands of the appellant. It was stated that PW8 was the brain behind the so-called trap.

5. After considering the rival stands the High Court held that the accusations were established but considering passage of time reduced the sentence to the period already undergone.

6. In support of the appeal learned Counsel for the appellant submitted that both the Trial Court as well as the High Court lost sight of the following features:

- (1) No demand was established;
- (2) Role of PW-8 is highly suspicious and his evidence lacks of
- (3) There were no independent witnesses;

(4) There was no positive evidence as to who had recovered the money as claimed by the prosecution from the appellant.

7. Learned Counsel for the respondent, on the other hand submitted that both the Trial Court as well as the High Court have analyzed the evidence in great detail and there is no infirmity in the impugned judgment.

8. Much has been made of the fact that most of the witnesses were in the same office. The evidence is to the effect that the appellant had asked PW-3 to pay money to co- accused Nag Narain who was to pass the money to him. PW-2 in his evidence has categorically stated that the decision was taken in CBI office that money is to be paid to Nag Narain who has made payment to the accused. Similarly, PW-10 while making verification about the genuineness of the allegations made by PW-3 has stated that he went to the residence of the appellant and he hid himself behind the bush and from there he heard talks between PW-3 and appellant. He has stated that the appellant asked PW-3 to make payment to Nag Narain. PW-3 corroborated this part of the statement of PW- 10 who is a constable. He was entrusted with the job to verify the genuineness of the allegations made by PW-3. He went to his Chamber and Nag Narain was present there. PWs 1 and 2 were independent witnesses and in their presence money was delivered to Nag Narain by PW-3. This was done because when PW-3 and Ors. reached at the hospital, the chamber was found locked. PW-3 met Nag Narain and paid money to him and proceeded to residence of the appellant. After reaching there PW-3 and Nag Narain went inside the gate and PW-2 and Ors. remained at the gate. It is clear from the evidence that the appellant came out after the call bell was pressed and Nag Narain passed the money to him. PW-2 who saw passing of money to the appellant, gave a signal and immediately thereafter Nag Narain and the appellant were arrested and money was recovered from the right hand of the appellant and both the hands of the accused persons were washed in separate solution and they turned pink. The currency notes were also recovered and the requisite formalities were followed. The plea that there is no demand made by the appellant is clearly belied by the evidence on record. The evidence clearly establishes that the appellant had asked the money to be passed on to Nag Narain who in turn handed over the money to the appellant.

9. In *B. Noha Vs. State of Kerala and Another*, it was, inter alia, observed by this Court as follows:

10. The evidence shows that when PW-1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to take cut and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in *Madhukar Bhaskarrao Joshi Vs. State of Maharashtra*, as follows:

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

11. This decision was followed by this Court in *M. Narsinga Rao Vs. State of Andhra Pradesh*, . There is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from PW-1. It was held in the decision in (2000) 9 SCC 752 in the case of *State of A.P. v. Kommaraju Gopala Krishna Murthy* that when amount is found to have been passed to the public servant the burden is on public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused.

10. In the case at hand all the requisites for proving the demand and acceptance of bribe have been established.

11. There is, therefore, no merit in this appeal which is accordingly dismissed.