

(2007) 02 JH CK 0060

In the Jharkhand High Court

Case No : Criminal Appeal No. 250 of 1998 (R)

Rajendra Prasad Singh

APPELLANT

Vs

The State of Bihar now Jharkhand

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2), 5(2), 7

Citation : (2007) 2 BLJR 1845 : (2007) 3 JCR 57

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : A.K. Kashyap and Ravi Prakash, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The sole appellant was put on trial to face charges u/s 7 as well as u/s 13(2) read with Section 13(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. 500/- 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 two years each for the offence u/s 7 of the Prevention of Corruption Act as well as u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. He was further sentenced to pay a fine of Rs. 1000/- for an offence u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and in default to undergo for further rigorous imprisonment for six months. Both the sentences were ordered to be run concurrently.

2. The complainant Mukhlal Nonia (P.W.1) working as a Loader in Kachhi Balihari Colliery was not paid his wages since July, 1990 as his statement of attendance was not made available to the Accounts Department by the appellant and whenever he made request to the appellant Rajendra Prasad Singh, posted as Time keeper but in the complaint (Ext.8) described as Hazri Babu, for sending his

statement of attendance, he asked for Rs. 2000/- for sending the statement of attendance of three months. Ultimately Mukhlal Nonia (P.W.1) on 1.11.1990 made a complaint in writing (Ext.8) to Superintendent of Police, CBI, Dhanbad which was referred to Sri T.J. Ghosh, Inspector of Police, CBI, Dhanbad for its verification, who on its verification found the allegation, prima facie, true and consequently submitted verification report (Ext.9) to the Superintendent of Police, CBI, Dhanbad. Thereafter the case was registered and the matter was endorsed to one A.K. Asthana, Inspector of Police, CBI, Dhanbad for investigation, who constituted a team consisting of himself, L.M. Majhi, Inspector (not examined), T.J. Ghosh (P.W.9), Kamla Prasad, ASI (not examined), Amrit Bahadur Thapa, Head Constable (not examined), two shadow witnesses, namely, Uday Kumar Sinha (P.W.3) and Binay Kumar (P.W.5) and the complainant Mukhlal Nonia (P.W.1). After doing formalities of pre-trap exercises, preliminary memorandum (Ext. 13) was drawn. During said course, six currency notes of the denomination of Rs. 50/- and two currency notes of the denomination of Rs. 100/- 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 then to convey it to the members of the trap team by rubbing forehead. On 2.11.1990 at about 9.50 A.M. raiding party reached near the attendance room of 10/12 pit of Kachhi Balihari Colliery and took position from where the appellant could be seen and then the complainant (P.W.1) and one of the shadow witnesses Binay Kumar (P.W.5) proceeded towards the attendance room where the appellant was sitting. When the complainant wished the appellant from near the door, the appellant came out of the door and walked away few steps where the appellant asked for money when complainant made request him to send his statement of attendance and after accepting the same, he told to the complainant that now his work would be done and then he counted the tainted money and kept it in the left hand side pocket of his trouser and then the appellant moved toward his room whereas the complainant moved towards outside and gave signal to the other members of the team. Upon it A.K. Asthana and the witnesses after seeing the transaction being taken place, rushed towards the room and two of the members of the raiding party caught hold of the hands of the appellant. Appellant became perplexed and could not offer any explanation. Thereafter Binay Kumar (P.W.5) took out tainted money from the left side pocket of the trouser, numbers of the tainted money were found to be the same as mentioned in the preliminary memorandum and thereafter phenolphthalein test was undertaken whereby both the hands of the appellants were dipped separately in solution kept in containers which turned to pink and then another trouser was arranged, the appellant changed the trouser and the inner lining of the left hand side pocket of the trouser was also subjected to said test, result of which was also found to be positive. Thereafter hand wash of both the hands as well as wash of inner lining of the left side pocket of the trouser contained in three different files were sealed. The tainted money recovered from the possession of the appellant was

sealed and then all the members of the raiding party signed over it. After all the formalities of the trap were over, memorandum of recovery (two in numbers) Exts. 4 and 14 were prepared which were signed by all the members of the raiding party and the arrest of the appellant was effected. In course of investigation, those three files as well as one file prepared at the time of pre-trap exercise were sent for its chemical examination to Director, Central Forensic Science Laboratory, Calcutta under forwarding letter (Ext.10). On being examined two of the samples marked as Ext.R (right hand wash) and Ext.D (pre trap solution) were found containing Sodium Carbonate solution and Sodium Phenolphthalein whereas only Sodium Carbonate contents were found in Ext.L (right hand wash) and Ext.P (wash of inner lining of the pocket).

3. After completion of investigation and after sanction of the prosecution was accorded under Ext.2, 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.1) as well as shadow witnesses, namely, Uday Kumar Sinha (P.W.3) and Binay Kumar (P.W.5), one of the members of the raiding party namely, T.J. Ghosh, Inspector of CBI was examined as P.W.9. Singheshwar Prasad, the then Senior Personnel Officer was examined as P.W.8, who explained the duty of the Time keeper as well as Attendance clerk and the Assistant Time keeper.

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 simply denied. However, it has been stated that the complainant wanted to work as time rated worker without there being such order which he did not allow and, therefore, he has falsely implicated. In defence five witnesses have been examined mainly on the point that attendance of the complainant working as a Loader was being marked not at the surface of the mines but at the underground by the Munshi and the appellant was not concerned with the marking of the attendance either on the surface or at underground suggesting thereby that appellant was not at all concerned with the attendance of the piece rated worker including the complainant and as such question of money being demanded by the appellant does not arise. However, the trial court on the basis of the evidences did find that it was the appellant being posted as Time keeper was suppose to send the statement of the attendance of the workers to the Accounts Department for drawal of the wages of the workers and the appellant did demand and accept the money to send the statement of the attendance of the complainant to the Accounts Department and thereby found the appellant guilty and hence sentenced him as aforesaid.

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

7. Learned Counsel appearing for the appellant submits with all vehemence that complainant was engaged in a colliery as piece rated employee and was working

as Loader whose job was to collect coal and to load it in a container and the wages of such type of workers are being paid taking into account the containers which are loaded with coal by the workers and the attendance of such piece rated worker is being marked by Munsi/Attendance Clerk not on the surface of the mines but at inside/underground which would be evident from the evidence of defence witnesses whereas the appellant was posted as Time keeper whose job was to supervise the attendance of the Clerk, Assistant Time keeper etc. which has been admitted by none-else than one of the prosecution witnesses, namely, Singheshwar Prasad (P.W.8), who at the relevant time was posted as Personnel officer in the said colliery and as such the appellant was never concerned with the attendance of the complainant and, therefore, the appellant is not expected to put forth the demand or would accept the money to do work which the appellant was never concerned with. Learned Counsel in order to buttress his stand that it was Munsi, who was responsible for marking attendance of the complainant has also referred to two applications (Exts. B and D) submitted by the complainant to the Manager of the Colliery, which clearly indicate that it was Munsi who was not marking his attendance but the trial court did not take into consideration this aspect of the matter and hence conviction of the appellant can be said to be bad on this count alone.

8. Learned Counsel further contended that prosecution has failed to establish that the appellant did accept the money as gratification and the evidences led in this respect are itself not contradictory as it is the case of the prosecution that the appellant after accepting the tainted money from right hand counted it and then put it in the left hand pocket of the trouser and then the appellant's hands as well as inner lining of pocket of trouser were subjected to phenolphthalein test and, accordingly, hand wash of right hand, hand wash of left hand and the wash of inner lining said to have turned to pink, were collected in three samples which were sent to chemical examination before the Forensic Science Laboratory, Calcutta. After the test was undertaken by P.W.6 only the sample of right hand wash was found containing Sodium Carbonate and Sodium phenolphthalein which is evident from Ext.6 and as such entire prosecution case gets belied by this Ext.6 and as such once the case of the prosecution regarding demand and acceptance of the tainted money is shrouded with doubt in view of the aforesaid circumstance the appellant cannot be held guilty even if there has been recovery of tainted money. Learned Counsel in support of his case has referred to a decision rendered in the case of Surajmal v. State (Delhi Administration) reported in 1980 SCC 159 and also referred to a decision of Anand Sarup v. State 1988 CriLJ 756.

9. Learned counsel further submits that it is the case of the complainant that the appellant demanded Rs. 2000/- but the complainant is absolutely silent as to under what circumstance the appellant allegedly accepted Rs. 500/- though the prosecution through P.W.9 has come forward to put forth explanation that the appellant asked the complainant to pay rest of the money in installments but evidently no such explanation has come from the mouth of the complainant and,

therefore, this also creates doubt over the prosecution case. At the end, learned Counsel submits that taking into consideration all these aspects of the matter, prosecution can certainly be said to have failed to prove the charges clinchingly, rather leaves so many doubts over the prosecution case and in that view of the matter the appellant deserves to be acquitted.

10. Lastly It was submitted that if the court finds the appellant guilty, he may be sentenced for the period which he has already undergone in custody as he has suffered rigor of the case for about 17 years and this can be said to be sufficient reason for reducing the period of sentence and in support of his submission, case of Tarsemlal v. State of Haryana 1987 SCC 409 was referred to.

11. As against this learned Counsel appearing for the CBI submitted that this is a case where prosecution with clinching evidences have succeeded in proving that the appellant demanded money as a reward for doing favour which he accepted and was caught red handed by trap team constituted and Rs. 500/- accepted as gratification was recovered which was subjected to phenolphthalein test giving positive result and in that event prosecution is not required to prove further, rather onus was upon the appellant that he did not receive any illegal gratification which the appellant failed to discharge it and as such charges levelled against the appellant get fully established. In this respect learned Counsel has referred to a case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, On the point of sentence it was submitted that minimum sentence prescribed u/s 13(2) of the Prevention of Corruption Act is one year and as per the ratio laid down by the Supreme Court in the case, as referred to above, the period of sentence cannot be reduced less than one year.

12. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that first point for consideration would be as to whether the appellant was at all concerned with the marking of attendance of the piece rated workers and the related matters leading to payment of wages to the workers. Admittedly, the appellant was posted as Time Keeper and as per the evidence of P.W.8 the then Personnel Officer posted in the said Colliery duty of the Time keeper is to supervise the attendance of the Clerks Assistant Time Keeper, whereas it was Assistant Clerk who used to mark attendance of the workers working underground the mines but at the same time he has said that attendance of the workers were also used to be maintained one at the surface and other at the underground level. This witness as like that of defence witnesses have stated that appellant was never assigned with the duty to mark the attendance of the workers. But at the same time the witness has said that the Muster Roll which is compilation of the attendance sheets was used to be prepared by the Assistant Time keeper and it was to be signed by Assistant Colliery Manager and then this appellant used to forward the same to the Bill clerk for preparing bill. Nothing has been elicited from the witness to indicate that the practice as stated by him was not in vague. On the contrary, D.W.3 has also accepted that the Muster Roll prepared was used to be put up before the

Assistant Time keeper and the Time keeper and then the same was to be forwarded to the Accounts Department for the purpose of drawal of pay, though this witness has not said that it was the appellant who used to forward but he has accepted the practice being followed as has been stated by P.W.8 and in that view of the matter, it can never be said that the appellant was not at all concerned with the attendance related matter leading to the payment of the wages of the workers. In this regard it be noted that the complainant (P.W.1) in his complaint (Ext.8) though has stated that it is Hazri Babu, who was demanding Rs. 2000/- for sending the statement of the attendance but he has categorically mentioned the name as R.P. Singh (appellant) and keeping in view the procedure, as has been discussed above, there appears to be mistake on the part of the complainant to refer appellant as Hazri Babu in his complaint (Ext.8)

13. Coming to other aspect of the matter, I have already noted that the complainant, when did not get wages for months together on account of non-submission of the statement of attendance before the Accounts Department, made complaint before the Superintendent of Police, CBI, Dhanbad which on being verified by P.W.9 was found to be prima facie, true and accordingly, a trap team was constituted with two independent witnesses, Uday Kumar Sinha (P.W.3) and Binay Kumar (P.W.5). After doing formalities of pre-trap exercises, raid was laid and as per plan, complainant came to the room of the appellant and wished him and then the complainant came out of the room where P.W.5 was present and on demand being made by the appellant, currency notes of Rs. 500/- smeared with phenolphthalein were given to the appellant and on signal being given, T.J. Ghosh, (P.W.9), Uday Kumar Sinha (P.W.3) and Binay Kumar (P.W.5) came and caught hold of the hands of the appellant and then money was recovered from his left hand side pocket of the trouser. It be stated that conversation regarding demand being made in between the complainant and the appellant was over heard by Binay Kumar (P.W.5) as he was there in near vicinity. At this stage, it would be worth while to note here that it was the case of the complainant that Rs. 2000/- had been demanded by the appellant but only Rs. 500/- was paid which was recovered. This aspect of the matter led to criticism as has been made on behalf of the appellant that there has been nothing in the evidence of complainant (P.W.9) to show as to under what circumstance complainant agreed to accept only Rs. 500/- and this certainly creates doubt over the case of the prosecution. True nothing seems to be there in the evidence of complainant (P.W.9) but P.W.5, who over heard the conversation in between the appellant and the complainant has stated in his evidence that when the complainant asked the appellant as to why the statement of attendance is being not sent, the appellant told him as to whether he has done the work he was asked to do, upon it the complainant told him that something has been done and he has brought Rs. 500/- and then the appellant accepted that money. This aspect of the matter appears to have been incorporated in the memorandum of recovery (Exts. 4 and 14). Thus, I do not find any substance in the submission made on behalf of the appellant in this respect. Further going into

the matter I do find that when tainted money was recovered from the left hand side pocket of the trouser of the appellant, both the hands of the appellant as well as inner lining of the trouser were subjected separately to phenolphthalein test which at the spot gave positive result meaning thereby that Sodium Carbonate solution turned to pink and accordingly hand wash of right hand, as well as left hand and the wash of inner lining said to have turned pink were collected in three samples which were sent to chemical examination before the Forensic Science Laboratory, Calcutta. After the test was undertaken by P.W.6 only the sample of right hand wash was found containing Sodium Carbonate and Sodium Phenolphthalein which is evident from Ext.6. In this view of the matter it has been submitted that entire recovery becomes doubtful. But in the facts and circumstances, I do not find much substance in this submission also. As I have stated that when the trap was laid, the appellant accepted Rs. 500/- from the complainant and then the said Rs. 500/- currency notes were recovered from the possession of the appellant in presence of two independent witnesses, namely, Uday Kumar Sinha (P.W.3) and Binay Kumar (P.W.5), who in no manner can be said to be interested in getting the appellant implicated falsely. Therefore, when there has been clinching evidence with respect to recovery of the tainted money from the possession of the appellant, expert report will have no bearing on the point of recovery of the tainted money, specially when the law does not require the prosecution to send such solution to chemical examination as has been held by the Hon"ble Supreme Court in a case of State of U.P. Vs. Zakauallah, .

14. Thus, I do find that the prosecution has been able to establish with clinching evidences that appellant on demand accepted the money and the said tainted money was recovered from the possession of the appellant. In this view of the matter, the ratio decided in the case of Surajmal v. State (supra) is not applicable in this case. Moreover, their Lordships laid down the proposition in the said case to the effect that mere recovery of money divorce from the circumstances under which it is paid is not sufficient to convict the accused in the circumstance that evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money was absent. Thus, I do find that the trial court has rightly convicted for the charges levelled against him and I do not find any reason whatsoever to interfere with the finding arrived at by the trial court. Accordingly, finding regarding conviction is hereby confirmed.

15. Coming to the point of sentence, I may reiterate that it is the stand of the appellant that as the appellant has faced the rigor of the protracted trial as well as suffered mental anxiety during the pendency of the appeal for about 17 long years this longevity itself be taken to be a special reason for awarding sentence for the period already undergone in custody. I am afraid that any sentence less than one year can be awarded in view of the provisions as enshrined in Section 13(2) of the Prevention of Corruption Act prescribing in minimum sentence of one year. I may just point it out that the corresponding provision of old Act i.e, Act of 1947 is Section 5(2) which reads as follows:

Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine;

Provided that court may for any special reason recorded in writing impose sentence of imprisonment of less than one year.

16. However, in the corresponding provision of Section 13(2) of the Act of 1988, there is no such proviso as in Section 5(2) of the earlier Act. Consequently, the court does not seem to have power to impose sentence less than the minimum even if there exists special reason for doing so. In this regard reference may be made of a case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, .

17. However, taking into consideration the facts and circumstances of the case as well as period of protracted trial including long pendency of the appeal, ends of justice would be met if the appellant is sentenced to undergo one year rigorous imprisonment each for the offence u/s 7 of the Prevention of Corruption Act as well as u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act as well as sentence of fine as imposed by the trial court. Consequently, bail bond of the appellant is hereby cancelled.

18. With the aforesaid modification on the point of sentence, this appeal is dismissed.