

(2009) 12 CHH CK 0054
In the Chhattisgarh High Court

State of Madhya Pradesh

APPELLANT

Vs

R.K. Pandey (died) and Another

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 161

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

Citation : (2009) 4 CGLJ 92 : (2010) 1 MPHT 98

Hon'ble Judges : Rajeshwar Lal Jhanwar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajeshwar Lal Jhanwar, J.—The State has preferred this appeal against the order of acquittal dated 5th September, 1991 passed by the learned 4th Additional Sessions Judge, Bilaspur in Special Case No. 1/88, whereby the learned 4th Additional Sessions Judge has acquitted the respondents from the charge u/s 161 of the IPC and Section 5 (1) (d) and Section 5(2) of the Prevention of Corruption Act, 1947 (for short "the Act").

2. Due to death of respondent No. 1-R.K. Pandey, during the pendency of this appeal, the appeal on behalf of respondent R.K. Pandey has been abated.

3. Case of the prosecution, in brief, is that the complainant Akram Ali, who is resident of Village Gajra was working on the post of Fitter in WCL. Due to some altercation between him and Tulsi at Bankimongara, Tulsi and his brother had lodged a report against him in the Police Station, Bankimongara. After 3-4 days of lodging of report, Head Constable Rampher (respondent No. 2) of Police Station, Bankimongara has called Akram Ali and detained him upto 3.00 p.m. in the Police Station and said to him that if he agrees to give some amount, he will leave him. At the same time one Mobin went to Police Station to see the complainant and Mobin was informed by respondent-Rampher that he will leave Akram Ali on the advice of R.K. Pandey. Mobin again told Rampher to leave the complainant whereupon respondent-Rampher let Akram Ali to go from his

custody. Thereafter, respondent-Rampher used to remind the complainant about illegal gratification and also informed that if he fails to give Rs. 500/-, Station House Officer R.K. Pandey shall arrest him. Upon which, the complainant lodged a written report to Dy. Superintendent of Police, Vigilance, Bilaspur vide his application (Exh. P-6). On receiving such report, the Dy. S.P., Vigilance prepared preliminary Panchnama vide Exh. P-7 and directed Inspector R.C. Panda to organize the trap. Dy. Collector B.R. Dhruv was called to witness the trap proceedings. The complainant gave Rs. 500/- of denomination of 100/- each, numbers of which were recorded in preliminary Panchnama (Exh. P-7). The complainant was shown demonstration of chemical reaction of Phenolphthalein powder and Sodium Carbonate which was to be used in trap proceedings. Phenolphthalein powder was applied on currency notes given by the complainant and after wrapping those currency notes in a white paper, they were kept in the shirt pocket of complainant. The complainant was explained not to touch the notes before giving it to the respondent and after giving the same he shall give a signal. Constable-Hiradhar and Gour were also members in the Trap Party. The complainant after reaching place of occurrence with the Trap Party, saw the respondent R.K. Pandey and on demand of respondent he gave Rs. 500/- to him. Thereafter, the complainant has signalled the trap party and as soon as the Trap Party tried to apprehend him, he dropped the currency notes on the ground whereupon the hands of the respondent R.K. Pandey were got washed with solution water (chemically melted) resulting in water became pink. Subsequently, pocket of full-pant in which the respondent had kept the currency notes was also dipped into the colourless water (chemical solution) which also became pink colour. The chemical solutions were seized and FIR was registered against the appellant. After completion of investigation and after obtaining necessary permission from the Competent Authority, charge-sheet was filed against the respondents in the Court of Special Judge.

4. The learned Special Judge, Bilaspur framed charge u/s 161 of the IPC and Section 5 (1) (d) and Section 5(2) of the Act against the respondents and read over and explained the same to the respondents, who abjured the guilt and pleaded that they have been falsely implicated in the case.

5. The learned 4th Additional Special Judge, Bilaspur has, after evaluating the evidence available on record and hearing the Counsel for respective parties, acquitted the respondents of the charge u/s 161 of the IPC and Sections 5 (1) (d) and Section 5(2) of the Act.

6. Madanlal (P.W. 1), owner of the hotel, in his statement has not disposed about the presence of respondent Rampher on the spot. He has stated that respondent R.K. Pandey was apprehended by the Trap Party. It is evident from the statement of R.D. Diwan (P.W. 7), Dy. S.P. that he has deposed only about the preliminary trap proceedings conducted before him.

7. The Special Court acquitted the respondent mainly on the ground that the prosecution could not establish that the respondents by use of corrupt and illegal

means or by abusing his position as a public servant, obtained illegal gratification of Rs. 500/- from the complainant.

8. It is evident from the evidence of Mobin Khan (P.W. 3) that he does not know about the quarrel between the complainant and Tulsi in the market. He had gone to Bankimongara Police Station to meet of complainant Akram. When he asked respondent Ramfer as to why the complainant was detained illegally upon which he was informed that due to some quarrel the complainant was detained. When he again asked from Ramfer to release the complainant, Ramfer sent him to respondent R.K. Pandey. When they reached R.K. Pandey, he directed Ramfer to release the complainant on bail. Thus, there was no conversation about the bribe at that time. According to Mobin Khan, on 17-6-1986 respondent Ramfer informed his wife to send Mobin to Police Station with Rs. 500/-. Mobin Khan went to Police Station along with the complainant and when the complainant was about to pay Rs. 400/- to Ramfer, Ramfer told him that R.K. Pandey will not accept it and demanded for Rs. 500/-. From perusal of the whole evidence of this witnesses, it is clear that he does not know as to when the respondents were caught.

9. Akram Ali (P.W. 6) also stated that he was arrested by Thanedar, Bankimongara. Mobin Khan (P.W. 3) came to meet him and released him on bail. On the next date respondent R.K. Pandey demanded Rs. 500/- from him. He also stated that while they were at hotel, respondent Ramfer met with him and asked amount on behalf of R.K. Pandey. When he gave Rs. 400/- to respondent Ramfer, he did not accept and asked for Rs. 500/- to give the same to respondent R.K. Pandey. He further stated that thereafter they reported the reported the matter to the Vigilance Office and the Vigilance Office organized the trap party to nab the appellant. He further stated that the trap party arrested respondent R.K. Pandey.

10. However, in his testimony it is nowhere stated that R.K. Pandey demanded money from him and he gave money to him. There is not even an iota of evidence of Mobin Khan to show that he went to Police Station and asked R.K. Pandey to release Akram Ali whereupon he told Ramfer to release Akram and thereafter he was released, at that time money was not demanded and also no discussion thereof was held to pay illegal gratification from them. It has also not come in their evidence that there was any conspiracy between the present respondents about demand of bribe money.

11. It is clear from the statement of Mobin (P.W. 3) and Akram (P. W. 6) that both of them have not stated that Ramfer demanded money from him and they gave money to Ramfer, but it is clear that they wanted to give money to Ramfer, but he refused to take. It is also surprised to note that despite opportunities being granted, the prosecution has not been able to examine Investigating Officer and other officers like him before the Court, who actually participated and successfully led the trap party. R.D. Diwan was only such witness, who participated in preliminary proceedings and did not accompany with the trap

party. There is nothing on record to show that the prosecution adduced evidence as to proceedings in which currency notes were treated with Phenolphthalein Powder and acceptance of those currency notes and also examination of those notes.

12. Hon"ble the Apex Court held in the matter of Budh Singh and Others Vs. State of U.P., , has held the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although the view of the Appellate Court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the Trial Court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the Trial Court has failed to take into consideration admissible evidence and has taken into consideration evidence thought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court.

13. It was further held by the Apex Court in V.N. Ratheesh Vs. State of Kerala, , that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Apex Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. The Apex Court referred to the decisions rendered in the matter of Bhagwan Singh and Ors. v. State of Madhya Pradesh 2002 (2) Supreme 567. It was further held that the principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clear unreasonable and relevant and convincing material have been unjustifiably eliminated in the process, it is a compelling reason for interference.

14. In Nepal Singh v. State of Haryana, decided in Criminal Appeal No. 383 of 2002 on 24-4-2009, the Apex Court while dealing with the acquittal of an accused has further held that it cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a Competent Court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the Trial Court.

15. In the facts and circumstances of the case and in view of the decisions (supra), rendered by the Supreme Court, I am of the view that the prosecution has not been able to prove the guilty of the respondents u/s 161 of the IPC and Sections 5(1) (d) and Section 5(2) of the Act. The learned Trial Court has not erred in acquitting the respondents u/s 161 of the IPC and Sections 5(1)(d) and Section 5(2) of the Act. Thus, the acquittal of the respondents is well merited

and does not call for any interference.

16. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly dismissed.