

(2009) 12 CHH CK 0062
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 290 of 1991

State of M.P. (Now C.G.)

APPELLANT

Vs

Roopchand Amule

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

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

Citation : (2009) 4 CGLJ 368

Hon'ble Judges : R.L. Jhanwar, J

Bench : Division Bench

Advocate : Rajendra Tripathi, for the Appellant; S.C. Verma, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Jhanwar, J.—This State appeal is directed against the judgment delivered by the Special Judge, Mahasamund in Special Case No. 13/1987 vide judgment dated 19.09.1990 whereby the Respondent was acquitted of the charge u/s 161 of the I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (henceforth "the Act of 1947").

2. It is not disputed that Respondent - Roopchand Amule was posted as Industrial Inspector in Directorate of Industries and on the date of incident i.e. 20.01.1986 he was on the same post working at Mahasamund. It is not in dispute that permission to prosecute the Respondent was granted. It is also not in dispute that the complainant is owner of Utensil Shop at Mahasamund.

3. The prosecution version in a nutshell is that in the months of May, 1985 the complainant Khemrao Banjari was granted loan amount of Rs. 15,000/- under Self-Employment Scheme for opening utensil shop from the State Bank of India, Branch at Mahasamund and out of that loan the complainant was entitled to get subsidy of Rs. 3,750/-. The Respondent - Roopchand Amule demanded illegal gratification of Rs. 100/- from the complainant to facilitate subsidy of Rs. 3750/-

but the complainant did not want to pay that money as demanded by the Respondent. On 20.01.1986 near about 4.00 - 4.30 p.m. the complainant after coming to know that Police Superintendent, Vigilance Department is at Mahasamund submitted a written complaint Ex.P. 1 before him and on the same day at evening trap party was arranged and demonstration of colourless Sodium Carbonate Solution and reaction of Phenolphthalein Powder was made by Constable Ramjee Bhoi. Two currency notes of Rs. 50/- (total Rs. 100/-) were handed over to Police Superintendent by the complainant and after applying Phenolphthalein Powder the same were kept in the pocket of complainant who was instructed to give those currency notes to Respondent on demand and after that indicate the trap party. The number of notes 6DE 409190 and 9EA 896899 were mentioned in the panchnama and all proceedings were made in preliminary panchnama vide Ex.P.2 which bears the signatures of members of trap party and the complainant. Thereafter, the trap party proceeded and took their position to nab the Respondent. The Respondent came to shop of the complainant near about 6 O'clock on 20.01.1986 and after some conversation the complainant gave those currency notes quoted with Phenolphthalein Powder to the Respondent and after receipt of signal from him the trap party immediately reached and caught hold the Respondent.

After this, the hands of the of Respondent were dipped in the colourless Sodium Carbonate solution which became pink and after making all necessary proceedings Dehati Nalishi Ex.P.3 was lodged. Document Ex.P. 10, the loan statement was also seized from the complainant. After completion of investigation all seized articles relating to chemical reactions were sent to Forensic Science Laboratory, Sagar,vide Ex.21 and the F.S.L. report is Ex.P.22.

4. After completion of investigation, charge sheet was filed before the Special Judge, Mahasamund who framed charges against the Respondent u/s 161 of the I.P.C. and Section 5(2)(d) read with Section 5(2) of the Act of 1947.

5. The Respondent abjured the guilt, pleaded innocence and led evidence in his defence that the complainant had given a false affidavit in obtaining the loan from the State Bank of India. In that affidavit he mentioned that his father was labourer whereas his father was Sub-Engineer and after retirement he opened a provisional stores and the income of the family of complainant was about Rs. 10,000/-. He asked the complainant why he had submitted false affidavit in obtaining loan. The Respondent also stated in defence that out of loan amount of Rs. 15000/-, he only repaid Rs. 100/- upon which he went to the complainant and informed that he should repay the entire loan amount. Thereafter, the Respondent was told that if he would arrange to get subsidy amount in cash, the complainant will repay the loan amount. The Respondent replied that it is beyond his jurisdiction and cannot do anything for subsidy. The Respondent also stated in defence that the complainant again and again requested him for recommendation of subsidy amount whereupon also he refused. He also stated on the date of incident when he returned from village Patewa, again the

complainant approached him and told to arrange loan for his handicapped sister. Then he went to the shop of the complainant for collecting details. The complainant again wanted recommendation letter for getting subsidy amount and he refused. The Respondent further stated that on the request of the complainant he prepared on the spot a recommendation letter Ex.P. 5 and put it in his bag. At the same time police came and apprehended him.

6. The learned Special Judge has, after evaluating the evidence of witnesses (who are 11 in number) produced by the prosecution and the defence of the Respondent and after hearing the learned Counsel for both the parties, acquitted the Respondent of the charge as mentioned in paragraph 1 (supra).

7. I have heard learned Counsel for the parties at length and have also perused the record of the Sessions Case.

8. In order to assess the evidence adduced by the prosecution, I shall first deal with the testimony of Kamal Narayan Sharma P.W. 11, who is member of the trap party and independent witness, stated that on 20.01.1986 at about 2 - 2.30 p.m. on receiving call, he went to the office of Superintendent of Police (S.P.), Vigilance Department where he saw two persons already present and he came to know that of the two persons is complainant Khemrao Banjari. S.P. shown him a letter Ex.P. 1 wherein on left side he wrote that he read and had a discussion with the complainant about the complaint and found it to be correct and marked that portion as" C to C". Thereafter, at Raipur, the demonstration of solution containing Sodium Carbonate was done and preliminary panchnama was also prepared at Raipur. Complainant gave two notes of Rs. 50/- each at Raipur which were later on treated with Phenolphthalein powder and put them in the complainant's pocket. He further deposed that the complainant was instructed about the proceedings to lab the Respondent and Ex.P. 2 panchnama was prepared. Thereafter, he stated, they came to Mahasamund and after reaching Mahasamund trap party took position and complainant went to his shop. He also stated that after some time Respondent came to the shop and 5-7 minutes thereafter the complainant signalled them whereupon the Respondent was caught red-handedly and panchnama Ex.P. 3 was prepared. Details of proceedings are shown in that panchnama.

9. The complainant Khemrao Banjari P.W. 1 stated that after opening the utensil shop, the Respondent came to his shop and told him that recommendation letter is necessary for getting subsidy and for that he demanded Rs. 100/- for recommending his case for subsidy. He further stated that as he did not want to fulfill the demand of the Respondent he submitted a complaint Ex.P. 1 in the Vigilance Department at Raipur. He also deposed that he wanted to submit the complaint Ex.P. 1 at Vigilance Department, Raipur and after coming to know that that vigilance officer had visited Mahasamund he gave the complaint Ex.P. 1 to him at Mahasamund. He further deposed that in the complaint submitted before the Vigilance Department he left some portion blank whereupon the Police Superintendent asked why the name of accused is not mentioned upon which he

told that he did not remember the name of the Respondent and therefore he has not mentioned.

10. From the above evidence, it is clear that the complainant submitted the complaint Ex.P. 1 at Mahasamund and not at Raipur. According to the complainant preliminary panchnama and necessary demonstrations were made at Mahasamund whereas according to Kamal Narayan Sharma P.W. 11 (independent witness), the complainant lodged a complaint Ex.P. 1 at the Office of Vigilance Department, Raipur itself and preliminary panchnama and necessary formalities for arranging demonstrations were made at Raipur Office itself. It is clear from the evidence of Kamal Narayan Sharma P.W. 11 that he has not seen the complainant giving two currency notes of Rs. 50/- to the Respondent and the Respondent did not demand any money from the complainant and according to this witness, one constable gave two currency notes of Rs. 50/- to one Verma, Deputy Police Superintendent. This witness also denied that those notes were seized from the part of the Respondent. According to Khemrao Banjari (the complainant), Kamal Narayan Sharma was present in his shop from beginning to end while proceedings were going on. It seems that Kamal Narayan Sharma (independent witness) witnessed the entire proceedings but in his statement he did not even depose that neither money was demanded by the Respondent nor was given by the complainant to the Respondent. Thus, the prosecution has not been able to prove the demand made by the Respondent and fulfilled by the complainant.

11. It is also evident in paragraph 38 of the testimony of the complainant that he came to know that recommendation of the Respondent is not required to obtain loan and its subsidy. The complainant admitted that only on his request the recommendation letter was prepared. He further deposed that thereafter he was under impression that it would be appropriate for him to give Rs. 100/- (Rs. 50/- each) to the Respondent in recompensing his work being done by the Respondent and in that process he was trying to put those currency notes in the pocket of the Respondent then the Respondent also caught hold his hands and while the Respondent while taking out those notes to return him, at the same time the police reached there. Thus, it is clear that the Respondent, as a matter of fact, was not a bribetaker and forcibly the bribe was put in his pocket by complainant.

12. It has also come in the evidence of A.J. Verma P.W. 6, S.K. Verma P.W. 7 and Mahesh Awasthy P.W. 8 that the Industrial Inspector has no role to recommend for getting subsidy and despite knowing all rules and regulations about the loan and subsidy, the complainant, it appears on the face of record, in order to involve the Respondent falsely has roped him in this false case. It is also to be noticed from the evidence of the complainant that he has submitted a false affidavit due to which he thought that loan would not be sanctioned and on this apprehension the complainant has unnecessarily roped the Respondent into false case. Therefore, the testimony of the complainant appears to be untrustworthy and

reliable, hence, the same can be discarded.

13. The version of the complainant P.W. 1 has also been tested in light of the evidence of other witnesses of trap party and ultimately the Special Judge has in its judgment in paragraphs 10,11,12,14 and 15 elaborately and vastly discussed the evidence adduced by prosecution and while disbelieving the evidence led by the prosecution found the Respondent not guilty u/s 161 of the I.P.C. and Section 5(1)(d) read with Section 5(2) of the Act of 1947 and thus acquitted him of the above charges.

14. According to Section 161 of the I.P.C, it is incumbent upon the prosecution to prove that accused had demanded illegal gratification for any work to do or not to do by using corrupt and illegal means or by abusing his position as a public servant. Thus, the prosecution, in the present case, has utterly failed to bring home the Respondent u/s 161 of the I.P.C. and Section 5(1)(d) read with Section 5(2) of the Act of 1947.

15. The Apex Court in the matter of Budh Singh and Others Vs. State of U.P., held that in a matter of appeal against acquittal, 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 brought 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.

16. It was further held by the Apex Court in V.N. Ratheesh Vs. State of Kerala, , that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Apex Court said that the golden thread which runs through the web of administration of justice in criminal cases is 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. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. 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 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 materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

17. In *Nepal Singh v. State of Haryana*, decided in Criminal Appeal No. 383 of 2002 on 24.04.2009, 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.

18. Having considered the facts and circumstances of the case, I am of the considered view that the prosecution has failed to bring home the Respondent guilty u/s 161 I.P.C. and Section 5(I)(d) read with Section 5(2) of the Act of 1947. I do not find any reason to interfere with such a finding recorded by the trial Court in a judgment of acquittal which was delivered by it as back as in the year 1990 for the alleged offence said to have been committed in the year 1986.

19. In the result, the appeal has no merit. The same deserves to be dismissed and is accordingly dismissed. The judgment of acquittal passed by the Special Judge is confirmed.