
(2016) 06 RAJ CK 0006

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 72 of 2016

State of Rajasthan

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) 164 AIC 889

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Arjun Singh Rathore, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—Heard the arguments advanced by the learned Public Prosecutor. Perused the impugned judgment as well as the record.

Byway of this application under section 378 (iii) (i) of the Cr.P.C., the State of Rajasthan has approached this Court craving leave to file an appeal against the judgment dated 21.11.2015 passed by the learned Special Judge, Sessions Court (Prevention of Corruption Cases), Udaipur in Criminal Case No. 18/2009 acquitting the respondent Om Prakash from the charges under Section 7, 13(1) (d) read with section 13(2) of the Prevention of Corruption Act, 1988.

2. Facts in brief are that Mangilal Lai Meena (P.W. 2) the complainant submitted a written report to the Dy. S.P., Anti Corruption Bureau, Chittorgarh on 17.11.2007 alleging that he was working as an Attendant in the Government Ayurvedic Dispensary, Borda. He required a personal loan from the S.B.B.J. Bank, Chittorgarh for the purpose of digging a well. The loan application was required to be accompanied by the salary certificate. Thereafter, he collected an application form from the Bank and approached the office of the District Ayurveda Department, Chittorgarh for getting the signatures of the Ayurveda Officer on his salary certificate. He met the L.D.C. Om Prakash working in the office of the District Ayurveda Officer and handed over the form and affidavit to him. He then

approached the District Ayurveda Officer and requested him to sign the salary certificate who refused to sign the document. Thereupon, the complainant returned to Om Prakash and told him that the Ayurveda Officer was not signing his form. Omprakash replied that the Ayurveda Officer would not sign the certificate unless his palms were greased. On this, he paid a sum off Rs. 100/- to Om Prakash who immediately went to the office of the Ayurveda Officer, got the certificate signed and handed it over to the complainant with the instruction that he had to pay an additional sum off 400/- as bribe for the Ayurveda Officer. The complainant mentioned in the report that he was not desirous of paying the bribe and wanted to get the concerned officials trapped. The Dy. S.P., Anti Corruption Bureau, Chittorgarh thereupon proceeded to get the demand verified. The complainant presented four notes of 100 rupees denomination which were dusted with phenolphthalein power and were returned to him for being paid to the accused by way of bribe. He approached the accused respondent and gave him the bribe amount. Thereafter, on receiving the pre-arranged signal, the trap team approached the Ayurveda Office. The respondent Om Prakash was asked whether he had taken bribe from the complainant. He replied that he had taken a sum of Rs. 400/- from Mangilal Meena on the instruction of Shri Badri Narayan Sharma, the Ayurveda Officer. He was about to pay the amount to Badri Narayan but in the meantime, the trap party arrived. On the basis of these proceedings, an FIR No. 301/2007 was registered at the CPS, ACB, Jaipur. The investigating officer came to a conclusion that the District Ayurveda Officer Shri Badri Narayan Sharma, demanded a sum off Rs. 400/- by way of illegal gratification from the complainant through the respondent Om Prakash, L.D.C. for signing the complainant's salary certificate. The offences of demand and conspiracy to seek illegal gratification were found to be proved against Badri Narayan Sharma as well as Om Prakash, the respondent herein. The competent authority, however, refused to accord sanction to prosecute the Ayurveda Officer Badri Narayan Sharma by order dated 5.3.2009. Thereupon, a charge-sheet was filed against the respondent Om Prakash alone for the offences mentioned above.

3. The Trial Court, by order dated 26.10.2010, framed charges against the respondent, who pleaded not guilty and claimed trial. The prosecution examined as many as 16 witnesses in support of its case. The accused, in his statement under section 313 Cr. P.C., took a stance that no work of the complainant Mangilal Meena was pending with him. He neither demanded bribe from Mangilal nor accepted the same. The District Ayurveda Officer had demanded bribe money from the complainant. The complainant got him trapped fraudulently by planting the currency notes on his table. One witness Devkishan Sharma was examined in defence.

4. The Trial Court whilst concluding the case by the impugned judgment, found that the complainant Mangilal Meena, did not support the prosecution case as against the respondent herein. He clearly stated that Om Prakash neither demanded bribe from him nor accepted the same. Allegations of demand as well as acceptance of bribe were attributed to the Ayurveda Officer Badri Narayan

Sharma. The Trial Court's judgment was strongly influenced by the conversation which took place between the complainant and the respondent herein during the demand verification and traps proceedings. In both the conversations, the accused respondent was clearly heard saying that he was not desirous of taking any bribe whatsoever. The Ayurveda Officer was carving for bribe. The complainant, tried to bargain on the amount on which, the accused replied that he should approach the Ayurveda Officer directly as it was he who was insisting for the bribe. He also told the complainant that while he was coming to the office, the Ayurveda Officer called him and made inquiries as to whether the bribe amount had been paid by the compounder or not. In both the transcripts of the conversation (Ex. P/4) which took place at the time of verification and Ex. P/7, the one recorded at the time of acceptance of bribe, the accused respondent was heard saying that he had been instructed by the Ayurveda Officer to collect the bribe on his behalf. The call details of the mobiles held by Ayurveda Officer and the accused respondent herein were also collected corroborating the fact that the Ayurveda Officer had called the accused in the morning before office hours. Numerous other witnesses who were examined by the prosecution, corroborated the fact that the accused respondent, divulged right at the time of trap proceedings that he had not accepted the bribe for himself and that the Ayurveda Officer was the one demanding the bribe. The Ayurveda Officer was arrested during the course of investigation, but the competent authority refused to grant sanction to prosecute him. It was noticed that the complainant did not corroborate the allegation of demand of bribe as against the respondent. He also resiled from his allegation regarding the respondent herein having accepted the bribe amount for himself. The Trial Court was of the opinion that the principal perpetrator of the crime being Badri Narayan Sharma, the Ayurveda Officer was left off in the case owing to refusal of sanction and thus the respondent herein was entitled to benefit of doubt.

5. Having heard the arguments advanced by the learned Public Prosecutor and after going through the impugned judgment and the record, this Court is also of the opinion" that the Trial Court, was perfectly justified in giving benefit of doubt to the respondent and acquitting him of the charges. The most significant circumstance which goes in favour of the accused respondent is the recording of the conversation held between him and the decoy at the time of verification of demand and exchange of bribe. In both these conversations, accused was heard saying that he was not desirous of taking bribe but the Ayurveda Officer was pestering him for taking the bribe on his behalf from the complainant. The decoy Mangilal (P.W. 2) himself, in his testimony, did not attribute the allegation of demand and acceptance of bribe to the respondent herein. In this back ground, the trial Judge was totally correct in holding that the prosecution failed to substantiate the allegation of demand and acceptance of bribe against the accused respondent by leading clinching evidence. Consequently, the acquittal of the accused as recorded by the Trial Court, vide the impugned judgment, is based on just appreciation of the material available on the record. The impugned

judgment of acquittal dated 21.11.2015 ex-facie does not suffer from any illegality, irregularity or perversity so as to grant leave to the State of Rajasthan to file an appeal their against.

6. The application for leave to appeal thus being devoid of any merit is hereby rejected.

7. Record be returned to the Trial Court.