
(2008) 12 RAJ CK 0040
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

Shri Mohan Prakash

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 7

Citation : (2009) 2 RLW 1695

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment dated 1st March, 1996, rendered by Special Judge (Prevention of Corruption Case), Jaipur whereby the accused respondent Mohan Prakash was acquitted in the offences u/s 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to Act 19.88).

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

That on 22nd January, 1992 PW/6 Ramphool submitted a written report Ex.P/8 before Dy.SP. ACD, Bundi stating therein that the accused respondent Mohan Prakash Saxena was a village patwari. He had, sent a list of poor persons of that village to be benefited by Antyodaya Yozna" which included his name. The village Patwari Mohan Prakash Saxena solicited for bribe of 100 rupees for recommending his name but he did not pay the same to him. It is alleged that thereafter he needed a bonafide resident certificate for his employment. The complainant came to talk on 19th January, 1992, contacted Mohan Prakash Saxena Patwari and prayed him to issue a bonafide resident certificate whereupon he solicited for a bribe of 100 rupees in lieu of issuing the same. The complainant did not intend to pay the bribe amount to the accused respondent and wanted an action to be taken against him. PW/9 Mahaveer Prasad the then Dy.S.P. RSBI, Bundi camp at Tonk initiated proceedings on his complaint and

formulated a scheme for entrapping the accused Mohan Prakash. He co-opted two independent witnesses PW/7 Shri Harish Chandra Gupta and PW/8 Shri Amir Ahmed. The complainant gave five currency notes each of the denomination of 20 rupees to the Dy.S.P. who initialed them and got phenolphthalein powder applied thereupon and returned the same to the complainant for handing them over to the accused Mohan Prakash on demand. The trap party proceeded to village Vazirabad where the accused Mohan Prakash was issuing receipts to the Khatedari tenants of land while sitting in a room of school. It is alleged that in the beginning the accused refused to take 100 rupees and asked the complainant to give them to his Class-IV. Ultimately, the complainant succeeded in giving those 100 rupees to the accused who on receiving a signal from the complainant, was trapped red handed by PW/9 Shri Mahaveer Prasad Dy. S.P. RSBI, Bundi who was associated by two independent witnesses and other police personnels. In fact, Shri Mahaveer Prasad prepared a detailed report Ex.P/12, recovery memo of currency notes Ex.P/13, prepared site plan Ex.P/14, and lodged the FIR Ex.P/20 whereupon the investigation commenced.

3. The investigating Officer recorded the statements of the witnesses acquainted with the facts and circumstances of the case, obtained the prosecution sanction Ex.P/5 from District Magistrate Tonk and after usual investigation submitted a police report u/s 173 (2) of Cr.P.C. against the accused in the competent Court.

4. The accused Mphan Prakash was indicted for the offence u/s 7 and 13(1) (d) (2) of "Act, 1988" who pleaded not guilty and claimed trial. In order to further its version the prosecution examined nine witnesses. In his explanation u/s 313 of Cr.P.C. the accused claimed innocence. He also adduced the written statements in the Court u/s 243 (1) of Cr.P.C. On completion of trial the learned trial Court did not find the accused guilty and acquitted him as indicated hereinabove.

5. None appeared on behalf of the accused respondent, hence I heard the submissions advanced by the learned Public Prosecutor appearing for the State and perused the relevant material available on record.

6. The learned Public Prosecutor, while reiterating the grounds recorded in the memo of appeal, has contended that the learned trial Court has not properly appreciated the evidence of prosecution witnesses and the statements of decoy Rani Phool has been abandoned merely for the reason that he belonged to scheduled caste. He has further contended that the statements of the decoy was also not considered for the reason that the trial court was of the view that Ram Phool had given the complaint at the instance of PW/9 Mahaveer Prasad, Dy.S.P. RSBI, Bundi. Thus, the impugned judgment of the lower court is against the law and facts which is liable to be set aside and the accused respondent deserves to be convicted and punished adequately.

7. The fact situation emerging in the instance appeal is thus:

(1) In the beginning the accused is alleged to have solicited for a bribe of 100 rupees for including his name in the list prepared under Antodaya Yozna"

(2) Thereafter the accused is alleged to have solicited for a bribe of 100 rupees, for issuing a bonafide resident certificate to the complainant for seeking his employment.

(3) It is revealed from the evidence of the prosecution witnesses that when the accused was trapped, he had tangibly stated to PW/9 Mahaveer Prasad that he neither demanded for a bribe of 100 rupees nor accepted the same.

(4) The statements of PW/6 Ram Phool and PW/9 Mahaveer Prasad are laden with contradictions in material particulars.

(5) At the end of cross examination the complainant Ram Phool was declared hostile by the prosecution.

(6) Not only the complainant turned hostile but the independent witness PW/7 Harish Chandra Gupta also did not support the prosecution case and a permission was obtained by the prosecutor from the court to declare him hostile.

(7) That PW/3 Shri Ashvin Kumar Gupta who accorded sanction to prosecute the accused is found to have issued sanction in routine without applying his mind to the facts and circumstances of the case. It is, the reason that this witness gave an absurd replies to all the relevant questions in his cross examination. This witness gave evasive replies and simply deposed that he did not remember anything as to what the bribe was solicited and as to which work of the complainant was pending with the accused respondent.

(9) PW/9 Mahaveer Prasad, Dy.S.P. RSBI, Bundi who laid the trap, has also supported this fact that no work relating to sending the complainant's name under Antyodaya Yozna" or with regard to issuing a bonafide resident certificate in his favour was pending with the accused.

8. Now, in view of the above fact situation, the only crucial question springing for consideration in the instant appeal is that whether the accused appellant solicited for a bribe of 100 rupees from the complainant in lieu of issuing of bonafide resident certificate or including his name in the list prepared by him under Antyodaya Yozna?

9. Now adverting to the statements of PW/6 Ram Phool, PW/9 Mahaveer Prasad and other prosecution witnesses, it is found that a list of poor people prepared under Antodaya Yozna had been sent by the accused much before the occurrence of trap took place. It is also noticed that it was not within the domain of the accused to issue a bonafide resident certificate to the complainant for seeking an employment. PW/9 Mahaveer Prasad himself has accepted that the accused refused to accept 100 rupees "of bribe from the complainant. He has also supported this fact that no official work was pending with the accused for which he could demand or accept such gratification as a motive or reward. PW/3 Shri Ashwani Kumar Gupta is also found to have accorded prosecution sanction in routine without application of mind to the facts and circumstances of the case.

10. Evidence of trap witnesses must be tested in the same way as that of any other interested witness and in a proper case the Court may look for independent corroboration before convicting the accused person?

It is a well settled preposition of law that in the case of evidence of accomplices, no conviction can be based on his evidence unless it is corroborated in material particulars.

No doubt, a public officer have no right to demand any bribe, but when he is hauled up before a criminal Court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and a material fact for consideration.

11. In the instant appeal neither the prosecution have been able to prove that the accused respondent solicited for a bribe of 100 rupees nor it is proved that he accepted any bribe of 100 rupees from the complainant. The complainant PW/6 Ram Phool himself has accepted in his cross examination that the accused was issuing receipt of rent to the Khatedari tenants who were depositing the rent (Lagan). He has also admitted that his father and brother were also depositing the amount of penalty, it is also revealed from the prosecution evidence that the accused refused to accept 100 rupees from the complainant and it has emerged in the statement that the accused asked the complainant to pay 100 rupees to the Class-IV which evinces that the decoy somehow by hook or by crook wanted to give tainted currency notes of 100 rupees to the accused so that he could be falsely entrapped.

12.. The learned trial Court has critically analysed and fairly appreciated the evidence of the prosecution witnesses at length. The learned Public Prosecutor has not advanced even a single argument which could render the impugned judgment unjust, improper or against the law and fact. The impugned judgment is cogent and well merited and suffers from no infirmity. Having critically analysed the prosecution evidence at length, the learned trial Court aptly arrived at a conclusion that no offence u/s 7 and Section 13(1) (d) was proved against the accused respondent. Albeit, PW/9 Mahaveer Prasad is a senior Police Officer who laid the trap at the instance of the decoy but his evidence also, in the facts and circumstances of the case, is not found to be reliable and trust-worthy. So far as the statements of the decoy PW/6 Ram Phool is concerned, he is undeniably and un-disputably a unblushing giver of bribe. The manner in which he has endeavoured to give tainted currency notes to the accused respondent, shows that he by hook or by crook wanted to get him entrapped.

13. In the case of Suresh Kumar Shrivastava Vs. State of M.P., it has been held that in a trap case if there is no evidence that the accused either demanded bribe or voluntarily accepted it at the time of trap, mere recovery of money from him is not sufficient to raise any presumption against him. Absence of motive on the part of the accused either to demand or accept bribe render the whole prosecution case doubtful. The reliance is placed also on the judgments given in

the case of Panalal Damodar Rathi Vs. State of Maharashtra, and G.V. Nanjundiah Vs. State (Delhi Administration), . Thus, it stands well established that mere recovery of bribe money is not sufficient for the conviction of the accused in the absence of substantive evidence.

14. In the ultimate analysis, I am of the considered opinion that the prosecution has miserably failed to establish the guilt against the accused respondent and the learned trial Court has rightly arrived at a finding of acquittal of the accused with which I fully concur and, to my firm view, the impugned judgment calls for no interference.

15. For these reasons, the State appeal being bereft of merits stands dismissed. The accused respondent is on bail. His bail bond also stands discharged.