

(2011) 07 JH CK 0003

In the Jharkhand High Court

Case No : Govt. Appeal No. 16 of 2000 (R)

Superintendent of Police, SPE/CBI

APPELLANT

Vs

Balmiki Singh, Subhash Kumar, Rajendra Prasad Ojha and
Ragho Bhagat

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120

Prevention of Corruption Act, 1988 — Section 12, 13(2), 7

Citation : (2012) 4 JCR 689

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Mokhtar Khan, for the Appellant; Rama Kant Tiwary and Prabir Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mrs. Justice Jaya Roy

1. The appellant has filed this appeal for setting aside the Judgment of acquittal dated 04.10.1999 passed by the Special Judge, C.B.I., Dhanbad in R.C. No. 18 of 1992 whereby the Respondents are acquitted from the charges under Sections 7 and 13(2) and 12 of the P.C. Act and 120 of the Indian Penal Code read with Section 7 and 13(2) of the Prevention of Corruption Act, 1988. The prosecution case, in nut shell, is that complainant-informant Abhijit Kumar (P.W.8) was the employee of one Sudhir Kumar Mishra who had been allotted telephone no. 5405. It was disconnected by the telephone department, Dhanbad for non-payment of the dues. When the said complainant- informant went to the telephone office to deposit the dues in the name of Sudhir Kumar Mishra on 16.12.92, accused Balmiki Singh demanded Rs. 500/- from him for restoration of connection of the said telephone to his employer as well as for not allowing any further problems and complications to arise in connection therewith in future. Then the said complainant lodged his complaint petition dated 16.12.92 (Ext. 9)

with the S.P. C.B.I., Dhanbad for necessary action against accused Balmiki Singh which resulted in verification of his allegations, laying of a trap proceeding and apprehension of the said accused red handed while demanding and accepting Rs. 500/- as bribe from the above complainant-informant on the very same day.

2. After investigation the I.O. Has submitted the charge against three other accused namely Subhash Kumar, Rajendra Prasad Ojha and Ragho Bhagat who are respondent nos. 2 to 4 in the present appeal. It is stated instead of bringing the defects in the said Closure Advise Note to the notice of the higher authorities, they have processed the steps which resulted into permanent closure of the telephone connection of Telephone no. DNB 5405 on 4.11.92.

3. The defence of the accused Balmiki Singh is that he has been falsely implicated as there was no person named Sudhir Kumar Mishra. The C.B.I. people have fabricated fictitious persons and filed this false case by setting of and after making collusion with the complainant-informant Abhijit Kumar. Accused appellant have not demanded any money from Abhijit Kumar as a bribe. The telephone number in question i.e. 5405 was not recorded in the name of said Sudhir Kumar Mishra nor in the name of the complainant-informant Abhijit Kumar. Therefore, there is no question of demanding any money from the complainant as alleged.

4. The prosecution has examined eleven witnesses to prove its case and amongst them P.W.8 is Abhijit Kumar (the informant), P.W.3 Basant Kumar, P.W.7 Promod Shankar independent witnesses of the trap proceeding, P.W.9 Ram Pujan Tiwary Sub-Inspector of Police of C.B.I. Dhanbad who has verified the complaint petition and submitted the verification report. P.W.11 Radha Kant Choubey the I.O. of the case, P.W.10 Forensic Expert, P.W.2 L.R. Kisku, P.W.4 Hare Krishna Bidyarthi, P.W.5 Rana Yogendra Narayan, P.W.6 Ram Kripal Mehta who are officials of the telephone department at Dhanbad at the relevant time and they have adduced evidence proving different documents in respect of telephone number 5405.

5. Mr. Khan the learned counsel appearing for the C.B.I. has submitted that the trial court has failed to appreciate the evidence of the witnesses who have supported the prosecution case against all the respondents- accused. He has further pointed out that P.W.2 has stated that the telephone number 5405 was allotted to Sudhir Kumar Mishra on 8.10.91 which was earlier existing in the name of the Superintendent Engineer H.S.C.L. Dhanbad.

6. Mr. Khan has farther contended that the trial court did not consider the evidence of the independent witness P.W.7 who have specifically stated that the I.O. (P.W.11) had caught hold of the hands of the accused Balmiki Singh.

7. Counsel appearing for the respondents (accused) have submitted there are numbers of contradiction in the evidence of two independent witnesses. He has pointed out that P.W.3 Basant Kumar (independent witness) and P.W.8 Abhijit Kumar (complainant) have stated that Balmiki Singh asked them to keep waiting in Verandah and thereafter Balmiki Singh came out from his room to Verandah

and demanded the money and accepted the same whereas the another independent witness P.W.7 namely Promod Shankar has not stated a single word regarding any conversation taken place between the complainant Abhijit Kumar and accused Balmiki Singh although he too claims to be present on the same Verandah at the relevant time as shadow witness. Even he has not stated about any demand made by the accused respondent or about acceptance of money by the accused respondent Balmiki Singh. He has simply stated that he saw the I.O. (the P.W.11) caught hold of the wrist of the accused respondent Balmiki Singh therefore, he has not proved either the demand or the acceptance part of the occurrence.

8. The counsel appearing for the accused respondents has further contended that the exhibit 2 (Subscriber Record Card) and exhibit 7 (Advise Notes) clearly prove that the telephone number 5405 in question was in the name of the S.E./PMCH works/HACL and the same was disconnected on 4.11.92 vide A/N 3262 dated 24.10.92. Therefore, there was no occasion for demanding any money for restoration of connection of the phone number 5405 in the name of the Sudhir Kumar Mishra or in the name of the complainant. It is further argued that in fact there is no person name Sudhir Kumar Mishra. The I.O. Himself has stated in his evidence that he has never enquired about Sudhir Kumar Mishra either regarding his existence or his having the aforesaid phone number 5405 in his house or whether the same is recorded in his name. Even the prosecution has not examined the said Sudhir Kumar Mishra as witness. Thus, all the circumstances cast a great doubt on the prosecution case. The trial court after considering the materials on the record and evidence of the witnesses and discussed the same in detail in the impugned judgment, acquitted the accused respondents.

9. It is further contended on behalf of the respondents that other three respondents nos. 2 to 4 namely Subhash Kumar, Rajendra Prasad and Ragho Bhagat had discharged their duties in respect of the Closure Advice Note 3262 dated 24.10.92 (Ext. No. 7) basis of which the telephone no. 5405 was permanently disconnected from 4.11.92. In this regard Rana Yagendra Narain Parmar (P.W.5) who was then the A.E. Phones, Dhanbad has admitted in his evidence at para 10 that he got the work of permanent disconnection (closure) of telephone no. 5405 done on the basis of the above Advice Note of the S.D.O Phones Dhanbad. He has further stated in his evidence at para 11, 12, and 13 that the Meter Register maintained in his office does not contain the name of the subscriber and it is not essential to mention the name and address of the subscriber of telephone in the Advice Note for disconnection thereof. It was because of that he got telephone no. 5405 disconnected even though there was no mention of the name and address of the subscriber in the Advice Note. The Advice Notes for disconnection of telephones without the names and addresses of the subscribers come in his office and they are acted upon and complied with and further what ever registers have been also filed from his office no defect had been detected therein, which is also mentioned by the trial court in its judgment. Thus evidence of P.W.5 clearly proves that there is no illegality or wrong on the

action/steps taken by the aforesaid respondents for disconnection of the telephone no. 5405.

10. Perused the Lower Court records and evidence of the witnesses including the documents which were made exhibits by the parties. In this case prosecution has brought numbers of the documents of the department concerned in respect of the telephone number 5405 and the said documents were made exhibits in this case. After perusal of the said exhibits, I find the telephone number 5405 which is in question, was in the name of the Superintending Engineer H.S.C.L. Dhanbad and said telephone number of the superintending Engineer H.S.C.L. was disconnected permanently on 4.11.92. The Exhibit-7 the Advise Notes No. 3262 dated 24.10.92 of the S.D.O. Phone, Dhanbad which shows that order was given for disconnection of the telephone No. 5405 and ultimately the same had been disconnected on 4.11.92. Furthermore, Exhibit-2 which is the Subscribers Record Card clearly shows the telephone no. 5405 was in the name of Superintend Engineer P.M.C.H works/H.S.C.L. and the same was disconnected on 4.11.92 vide A/N 3262 dated 24.10.92. The I.O. (P. W. II) has also confirmed this fact in para 16 of his evidence. Therefore, it can not be said that it was ever allotted to Sudhir Kumar Mishra or the complainant before 4.11.92. Thus, there is no question for demanding any amount of money as illegal gratification for restoration of connection of the aforesaid telephone i.e. 5405 in the name of the Sudhir Kumar Mishra prior to the aforesaid date i.e. 4.11.92. The question of allotment or restoration of connection would arise only after 4.11.92., therefore, the issuance of bills of the earlier dates in the name of the Sudhir Kumar Mishra can not arise. Thus, the cause of demanding illegal gratification as alleged in the complaint petition does not exist at all.

11. Further, P.W.5 who was Assistant Engineer, Phones, Dhanbad in his evidence very specifically stated that it is not essential to mention the name and address of the Subscriber of the telephone in question in the Advice Note. He has practically put the final seal of correctness on the acts of the respondent no. 2 to 4 in respect of disconnection of the telephone no. 5405 on 4.11.92. Trial court has rightly remarked that on what basis the I.O. has concluded in that the said Advice Note dated 24.10.92 led to permanent disconnection of telephone no. 5405 of Sudhir Kumar Mishra.

12. After considering the evidence of the witnesses, I find there are numbers of major contradictions, not only that the P.W.7 the independent witness has not stated about the demand of money by the accused respondent No. 1 or about the acceptance of the same by the said accused respondents though he claims that he was present at the place of the occurrence at the relevant time. The trial court after going through the evidence of the witnesses has found the trap proceeding also as doubtful and the cause which is alleged in the complaint petition for demanding illegal gratification does not exist at all. Having going through the records of the case and considering the contentions of the both the parties and the findings given by the trial court, I am satisfied that the

prosecution has failed to prove its case against all the respondent accused and there is no error in the judgment impugned. This appeal is dismissed accordingly.