

(2014) 07 MP CK 0039
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 5444/2014

The State of Madhya Pradesh

APPELLANT

Vs

Amarjeet Mishra

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2014) 07 MP CK 0039

Hon'ble Judges : S.K. Seth, J;N.K. Gupta, J

Bench : Division Bench

Advocate : Aditya Adhikari, Counsel, Advocate for the Appellant

Judgement

N.K. Gupta, J.—Heard on admission.

2. The State through S.P.E., Lokayukt has preferred the present application for grant of leave to appeal against the judgment dated 6.2.2014 passed by the learned Special Judge under Prevention of Corruption Act, Satna in special case No.2/2012, whereby the respondent was acquitted from the charges of offence under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

3. The prosecution's case, in short, is that, the complainant Narendra Kumar Tiwari (P.W.1) has submitted a written report, Ex.P/1 on 22.9.2009 before, SP, S.P.E. Lokayukt, Rewa that he desired a second copy of ?Rin Pustika? in the name of his mother Buttiba Bai @ Surajwati and the respondent was demanding a sum of Rs.2,500/-. Inspector Arvind Kumar Shrivastava (P.W.8) gave him a pocket tape recorder and a micro cassette to get the talks recorded with the respondent. On 23.9.2009, the complainant returned that tape recorder and micro cassette that his talks with the respondent Amarjeet Mishra was recorded. After getting the transcript of the talk, S.P.E. Lokayukt decided to arrange for a trap proceeding. On 24.9.2009, at about 4 a.m., the complainant appeared in the S.P.E. office, Rewa and he tendered two currency notes denomination of Rs.500/-

and 5 currency notes, denomination of Rs.100/-, which were to be given to the respondent, whereas a part payment of Rs.1,000/- was made when the complainant recorded the talks with the respondent. After making various technicalities, such currency notes were kept in the pocket of the complainant by applying phenolphthalein powder and then, at about 11.30 a.m., the trap group left for the office of the respondent. Devendera Tiwari (P.W.4) and Brijesh Kumar Mishra (P.W.6) were provided by the Collector concerned as notified officers to witness the trap proceeding. At 2.30 p.m., the complainant went to the house of the respondent but, he was not available in the house, he called the complainant after sometime and therefore, the complainant was again sent to the house of the respondent at 3 p.m. and 5 p.m. respectively. At about 6.30 p.m., the complainant informed that the respondent alongwith two persons came to his office and thereafter, he was again sent to give the bribe. The complainant came back and informed that due to an anonymous call received on the mobile phone of the respondent, now he is not ready to take the money on that particular day and therefore, after preparing of various memos, officers of S.P.E. came back to their office and after getting a sanction of prosecution, the charge-sheet was filed before the Special Judge.

4. After considering the submissions made by the learned counsel for the applicant and evidence adduced before the trial Court, it would be apparent that the complainant Narendra Kumar Tiwari (P.W.1) has turned hostile. He has informed that his talks could not take place with the respondent and he applied for duplicate ?Rin Pustika? with help of his employer Kamal Goyal and Kamal Goyal was arranging for duplicate Rin Pustika. Devendra Tiwari (P.W.4) who was authorized witness did not support the prosecution's story in toto. He could not remember so many things done during the trap proceedings but, Brijesh Kumar Mishra (P.W.6) has stated that a trap was arranged and prior to the arrangement of the trap, micro cassette was also heard and thereafter, so many memos were prepared by the S.P.E. However, it is not the prosecution's case that the accused/respondent took the bribe during the trap. Under such circumstances, trap relating to demand of Rs.1,500/- by the respondent turned failure and by such a failed trap, no evidence is created against the respondent.

5. The prosecution's case was dependent upon the tape recorded by the complainant, which was produced to the officers of S.P.E. and recording was heard by the authorized witnesses before leaving for the trap and therefore, if the respondent had accepted a sum of Rs.1,000/- then, it can be presumed that he accepted a sum of Rs.1,000/- as part of bribe and he demanded the bribe. However, the talk which was recorded by the complainant was alleged to be recorded by the complainant and at that time, no other witness was present. Since the complainant turned hostile then, it was for the prosecution to prove that voice recorded by the complainant alongwith his voice was of the respondent. For that purpose, sample of voice of the respondent should have been taken and comparison of voice sample of the respondent should have been obtained, from some laboratory or an expert. No such procedure is adopted by

the prosecution and therefore, when the complainant turned hostile, it cannot be presumed that the complainant gave a sum of Rs.1,000/- to the respondent. Under such circumstances, it was a case in which when the complainant turned hostile, the entire prosecution story went away. When it was not proved beyond doubt that talk recorded by the complainant was the talk which took place between the complainant and the respondent then, it cannot be presumed that the respondent demanded any money or he got bribe of Rs.1,000/- in advance.

6. In this connection, statement of Naib Tehsildar Jitendra Kumar Verma (P.W.2) may also be perused in which it is made clear that for getting a duplicate ?Rin Pustika?, concerned person has to file an affidavit and to get ?No Objection Certificates? from various banks of that area. No such application for providing a duplicate ?Rin Pustika? was found in his office even after that trap and therefore, when the complainant did not apply for the duplicate rin pustika then, there was no probability that the concerned Patwari would have asked for bribe to prepare a duplicate rin pustika. On the basis of the aforesaid facts, the demand of bribe becomes doubtful.

7. It is a case in which there is no basis so that any interference can be done in the judgment of acquittal passed by the learned Special Judge. If leave is granted then, appeal filed by the S.P.E. shall not succeed. Hence, leave is refused.

8. Copy of the order be sent to the trial Court alongwith its record for information.