
(2008) 04 MP CK 0054
In the Madhya Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

Anjani Kumar Khare

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Evidence Act, 1872 — Section 114, 133, 47, 67, 74
Penal Code, 1860 (IPC) — Section 161, 165A

Citation : (2008) CriLJ 2893 : (2008) 4 MPJR 21

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

The impugned judgment of absolvitur passed by learned Special Judge, Jabalpur in Special Case No. 9/88 acquitting the respondent from the charges punishable under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 (In short "the Act") and also u/s 161, IPC on 16th January, 1995, has been made pivot by Union of India, through the Superintendent of Police, Central Bureau of Investigation, Jabalpur by filing this appeal u/s 378(3) of the Code of Criminal Procedure, 1973.

In brief, the case of prosecution is that complainant-Devendra Kumar Gupta applied to obtain loan from State Bank of India, Gotegoan Branch through Industry Department. The application to sanction the loan was referred to the respondent for doing the needful and to put his recommendation on that application. It is said that complainant-Devendra Kumar Gupta approached respondent for several times in the Bank and requested him to put his recommendation so that loan amount may be sanctioned, but, respondent every time avoided to do the needful. It is the further case of prosecution that respondent made a demand of illegal gratification of Rs. 600/-from the complainant and on being told by complainant that his financial condition is very

weak, the deal of illegal gratification was settled for Rs. 450/-.

It is said that on 29-3-1988 complainant/Devendra Kumar Gupta made a complaint to Dy. S.P., CBI who arrived at Gotegoan to hold the camp, complaining the alleged illegal gratification of Rs. 450/- demanded by respondent to sanction his loan. On lodging of written complaint, Dy. S.P. CBI came into action and a trap was arranged. Currency notes of Rs. 450/- coated by Phenolphthalein power were given to the complainant and number of currency notes were noted down on the memorandum. The complainant was pacified to handover the currency notes of Rs. 450/- to the respondent and thereafter he was sent to the Bank. In the Bank when complainant contacted respondent, he made a demand of illegal gratification of Rs. 450/- and on being told by complainant that he has brought the money with him, the respondent, on relevant documents of loan, took signatures of the complainant and thereafter it is said that respondent directed complainant to accompany him out of the Bank premises to give the illegal gratification.

It is the further case of prosecution that in a shop namely "Gift Centre" which is located nearby the Bank, the complainant and respondent went there where complainant gave the currency notes of Rs. 450/- to the respondent. Any how, respondent noticed that some unwanted persons are here and there and observing him, as such he (respondent) gave those currency notes of Rs. 450/- to Mohan Tamrakar who is the owner of the shop of Gift Centre and told him that in the evening he will collect this amount from him. At that juncture, CBI Inspector S.Y. Khan and other officers arrived and caught hold respondent and his search was taken, but, the currency notes were not recovered from him. On being told by respondent that he had given the currency notes to Mohan Tamrakar, the search of Mohan Tamrakar was taken and currency notes of Rs. 450/- were seized from the pocket of his trouser. The number of currency notes were tallied with the number mentioned in the memorandum. Thereafter the right hand of respondent and also the right hand of Mohan Tamrakar were washed in the solution of sodium carbonate and the colour of the hand wash turned to pink.

After investigation was over and after obtaining the sanction, a charge-sheet was submitted before the Special Judge who, on the basis of the allegations made against the respondents framed charges punishable u/s 161. IPC and u/s 5(1)(d) read with Section 5(2) of the Act. Needless to emphasise, respondent abjured his guilt and pleaded complete innocence. His defence is of maladroitness implication.

In order to bring home the charges, prosecution examined its witnesses and also exhibited the documents. The specific defence of the respondent is that the brother of one CBI Constable Ashok Tiwari applied for obtaining the loan from the Bank where the respondent was serving, but, his application was not allowed and the loan was not sanctioned and as such CBI Constable Tiwari was keeping enmity with him (respondent). The further defence of respondent is that on the date of incident he was busy in discharging his duty in the Bank and by using

force he was carried to the shop of Mohan Tamrakar. His further defence in his statement recorded u/s 313, Cr.P.C., 4s that complainant applied to obtain loan to the tune of Rs. 15,000/-, however, respondent recommended to sanction the loan up to Rs. 12,000/- only; as such complainant was keeping enmity with him and, hence, he has been falsely roped in the present case.

Learned Special Judge, after appreciating and marshalling the; evidence, came to hold that the evidence of Mohan Tamrakar (P.W. 3) is not admissible in the evidence, since he is an accomplice. According to learned Special Judge, the sole testimony of the complainant whose position is also to that of accomplice, without any independent corroboration, cannot be placed reliance because the corroboration is a rule of prudence. Learned Special Judge also came to hold that the evidence of complainant is also not worth reliable and further it has been held that since there is no recovery from the respondent, therefore, the charges framed against him are not proved. The defence of respondent was also found to be probable by learned Special Judge By putting emphasis on the sanction order Ex.P/22, learned Special Judge held that the same has also not been accorded in accordance with law and has been accorded without application of mind. Learned Special Judge, eventually, acquitted the respondents by the impugned judgment.

In this manner, the present appeal has been filed by the Union of India through the S.P., CBI assailing the Judgment of absolvitur.

It has been contended by Shri Jayant Nikhra, learned Counsel for the appellant, that in the present case there is a valid sanction u/s 6 of the Act and in that context he has invited my attention to Ex. P/22 and has submitted that if this sanction order is considered in proper perspective, since the sanctioning authority has applied its mind on the documents, therefore, it cannot be said that there is no valid sanction. On the point of sanction, learned Counsel has placed reliance on two decisions of Supreme Court, they are State of Tamil Nadu Vs. Damodaran, and State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .

By putting deep dent on the finding of learned Special Judge holding that the testimony of complainant-Devendra Kumar Gupta (P.W. 1) is not corroborated by any independent evidence, reliance has been placed by learned Counsel on the decision of Supreme Court M.O. Shamsudhin Vs. State of Kerala, . By placing reliance on Section 4 of the Act and the decision of the Supreme Court Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, it has been argued that there is a presumption of taking illegal gratification by a public servant if it is proved that the accused has accepted or obtained or has agreed to accept or to attempt to obtain for himself or for any other person any gratification other than legal remuneration from any person. By attacking to the defence taken by respondent, it has been contended by learned Counsel that the same is not even probable and in that context he has placed reliance on the decision of Supreme Court State of State of Maharashtra Vs. Rashid Babubhai Mulani, . On these premised submissions, it has been argued by learned Counsel for the appellant that by setting aside the impugned judgment of absolvitur this appeal be allowed

and the respondent be convicted for the offence for which he was charged.

On the other hand, Shri S.C. Datt, learned senior Counsel for the respondent, argued in support of the impugned judgment and has submitted that in the present case the statement of Mohan Tamrakar (P.W. 3) cannot be placed reliance because he was also arrested and made accused in the case. In this context, he has invited my attention to the FIR Ex. P/24 in which Mohan Tamrakar (P.W. 3) has been shown as accused No. 2. The contention of learned senior Counsel is that if Mohan Tamrakar was an accused and as he was also arrested and was released on bail, therefore, his evidence would be that of accomplice and should not be placed reliance. In this context, he has invited my attention to Section 114 Explanation (b) of the Evidence Act. The contention of learned senior Counsel is that the evidence of accomplice needs independent corroboration. By inviting my attention to the testimony of complainant Devendra Kumar Gupta (P.W. 1), it has been argued by learned senior Counsel that his evidence is not worth reliable and there are serious infirmities, contradictions and omissions in his evidence and it would be highly unsafe to place reliance on uncorroborated testimony of the complainant.

By inviting my attention to the testimony of P.W. 8-C.P. Shukla who has proved the sanction order Ex. P/22, it has been contended by learned senior Counsel that if his evidence is considered in proper perspective, the entire sanction order would be washed out because it is borne out from his testimony that indeed the sanction was accorded by him and not by Mr. Sinha who has signed the sanction order and before Mr. Sinha (sanctioning authority) the entire documents were not placed, hence, sanction order Ex. P/22; cannot be said to be a valid sanction.

It has also been put forth by learned senior Counsel that the defence taken by respondent is quite probable and under the law, the degree of proof of defence cannot be that much higher as that of prosecution who has to prove its case beyond all possible doubt. The Court is only required to see whether the defence is probable or not. According to learned senior Counsel, it has been borne out from the testimony of the S.P. Mishra, Assistant Manager of the Bank (D.W. 1) that the respondent was manhandled and was dragged out from the bank premises on the date of incident and, therefore, the defence of respondent is quite probable that he has been falsely roped. On these premised submissions, it has been argued by learned senior Counsel that this appeal be dismissed by affirming the judgment passed by learned Special Judge.

In reply, it has been argued by Shri Nikhra, learned Counsel for the appellant, that initially Mohan Tamrakar was arrayed as accused and his name has also been mentioned in the first information report Ex. P/24, but, when final report was submitted and charge-sheet was filed before the Special Judge, Mohan Tamrakar was not arrayed as accused but his name was shown in the list of witnesses and, therefore, it cannot be said that he is not a witness and his status would be that of accomplice.

Having heard learned Counsel for the parties, I am of the considered view that this appeal deserves to be dismissed.

On going through the FIR Ex. P/24, it is gathered that Mohan Tamrakar has been shown to be an accused. He was also arrested and was enlarged on bail. True, when the case was registered at Crime No. zero at the spot he was not made accused but it is equally true that later on he was arrayed and was shown to be an accused and, therefore, the statement of Mohan Tamrakar would be that of accomplice and his evidence require corroboration, on this point, learned Special Judge has assigned reasons in its Judgment by placing reliance on the decisions of the Supreme Court *Raghubir Singh v. State of Punjab* AIR 1978 SC 91 and also *Ram Prakash Arora Vs. State of Punjab*, . Learned Counsel for the appellant could not point out any law that the co-accused who was arrested and enlarged on bail and later on made as prosecution witness, his status would not be that of accomplice. Hence, I also hold that the status of Mohan Tamrakar was also that of accomplice and his evidence needs independent corroboration by adducing reliable evidence.

On going through the testimony of complainant-Devendra Kumar Gupta (P.W. 1), this Court finds that recovery of the currency notes was not made from the respondent and as per prosecution's own case the same was recovered from co-accused Mohan Tamrakar. In the cross-examination it has been admitted by the complainant that Ashok Tiwari, Constable of CBI is known to him because he happened to come to his Pan Shop. He has further admitted that on the date of incident Ashok Tiwari met him and he (complainant) told his grievance to him (Ashok Tiwari). On this, said Ashok Tiwari told him to lodge a complaint because Dy. S.P., CBI has come to Goteagaon to hold the camp. In para 21 of his cross-examination, he has further admitted that he applied to obtain loan of Rs. 15,000/- but the same was sanctioned up to the extent of Rs. 12,000/- only.

The specific defence which has been taken by the respondent u/s 313, Cr. P.C. is that he sanctioned loan of Rs. 12,000/- of complainant and for this reason he made a false complaint because complainant was insisting to get the loan of Rs. 15,000/- sanctioned for which the respondent was not ready because his entitlement to obtain loan was up to Rs. 12,000/- only. The further explanation which he has given is that when he was discharging his official duties inside the Bank, at that juncture, he was manhandled and forcibly dragged from the Bank premises to the shop.

At this Juncture, the statement of S.P. Mishra (D.W. 1) who, at the relevant point of time, was serving on the post of Assistant Manager is quite relevant. According to him, on the date of incident one Constable of CBI Tiwari came in the Bank and had talked with respondent. Thereafter said Tiwari caught hold the respondent and was insisting him to accompany him out-side the Bank premises and thereafter he started dragging the respondent. The respondent also made a complaint to him and when this witness tried to intervene, said constable Tiwari told that search of respondent is to be taken. Thereafter some persons encircled

the respondent and searched the pocket of his trouser and shirt, but nothing was recovered from his pocket. Thereafter some CBI officers and one Mr. Khan also came and carried respondent with them in the shop of Mohan Tamrakar. Thus, the defence of respondent is quite probable. The Supreme Court in the case of Punjabrao Vs. State of Maharashtra, has categorically held that in a case u/s 5(1) (d) of the Act, if the defence is found to be probable, it should be given due weightage and in order to prove his defence the accused is not required to establish defence by proving it beyond reasonable doubt.

The status of complainant-Devendra Kumar Gupta (P.W. 1) is also that of accomplice. If for the sake of argument it is held that he is not an accomplice, even then the statement of payer would be deemed to be that of accomplice as has been held in para 8 by the Supreme Court in the case of Panalal Damodar Rathi Vs. State of Maharashtra, which reads thus:

8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165A of the IPC making the person who offers bribe guilty of abetment of bribery the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

Because, the statement of payer is that of accomplice, normally its evidence needs corroboration by the testimony of some independent witness though he may be a competent witness against the accused u/s 133 of the Evidence Act. The Supreme Court in the case of Muluwa and Others Vs. The State of Madhya Pradesh, , has held that the evidence of an infirm witness does not become reliable merely because it has been corroborated by number of witnesses in the same brand. In the case of V.C. Shukla and Others Vs. State (Delhi Administration), the Supreme Court has again held that the evidence of an accomplice cannot be accepted in any material particular in the absence of corroboration from reliable sources. In an earlier decision Rameshwar Vs. The State of Rajasthan, , it has been held by the Apex Court in para 23 that the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. However, in the present case, there are no such circumstances existing nor any independent source have been shown by the prosecution and, therefore, it will be highly unsafe to place reliance on uncorroborated evidence of the accomplice. The uncorroborated testimony of complainant, as he is an interested witness, cannot be placed reliance, this has been so held by the Supreme Court in the above said two decisions Ram Prakash Arora Vs. State of Punjab, and Raghbir Singh Vs. State of Punjab, which were also placed reliance by learned Special Judge.

In this view of the matter, the statement of complainant cannot be said to be

clear, cogent and trustworthy. He is an interested witness because he was insisting the respondent to get his loan sanctioned up to the extent of Rs. 15,000/- but the respondent did not agree and sanctioned the loan Rs. 12,000/- only as per his entitlement. The statement of complainant is not corroborated by any other independent witness. The decision of O.M. Shamsudhin AIR 1995 SCW 2717 (supra) placed reliance by learned Counsel for the appellant is also not against the respondent because in para 12 of that Judgment the Supreme Court has held that a person offering bribe to public officer is an accomplice and the corroboration of his testimony is necessary. The decision of Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, placed reliance by learned Counsel for the appellant is not applicable because in the present case charge framed against appellant is u/s 5(l)(d) of the Act and the presumption u/s 4 of the Act is not applicable if the accused is charged u/s 5(1)(d) of the Act even otherwise, for the reasons stated herein above, it will not be safe to draw any legal presumption in order to attract Section 161, IPC looking to the explanation and probable defence given by the respondent in his statement recorded u/s 313, Cr.P.C. which is also corroborated by the evidence of D.W. 1-S.P. Mishra, Asstt. Branch Manager. The decision of Rashid B. Mulani 2006 Cri LJ 794 (supra) is also not applicable in the present case because the explanation given by respondent in his statement recorded u/s 313, Cr.P.C. finds place from the statement of S.P. Mishra (D.W. 1) who, at the relevant point of time was serving on the post of Assistant Manager and who has stated that by manhandling the respondent, he was dragged out from the Bank premises and when intervened, no recovery was made from his pocket.

Now I shall advert myself on the point of sanction which is also an important issue in the case. The sanction order is Ex. P/22. The contention of Shri Nikhra, learned Counsel for the appellant, is that on going through Ex. P/22, it is clear that after going through the relevant documents and statement of the witnesses recorded by Investigating Officer as per Annexures-A and B which were placed before the sanctioning authority Shri M.K. Sinha, the sanction was accorded. To me, the sanction order is a public document as envisaged u/s 74 of the Evidence Act and can be proved by its mere production as well as by examining any witness in terms of Sections 47 and 67 of the said Act. In the present case the prosecution has chosen the mode given under Sections 47 and 67 Evidence Act by examining P.W. 8-C.P. Shukla who, at the relevant point of time, was serving on the post of Manager, Vigilance, in the State Bank of India at Bhopal. Though this witness has proved the signature of sanctioning authority Mr. M.K. Sinha, who at the relevant point of time was serving on the post of Chief General Manager, but, if the cross-examination of this witness is seen, it would reveal that the sanction has not been accorded by Mr. Sinha and mechanically he has signed the sanction order. In para 3 of his cross-examination, this witness has admitted that indeed he examined the documents on the basis of which the prosecution was to be launched and thereafter he 1 wrote sanction order Ex. P/22. In para 4 of his cross-examination, this witness has further admitted that

he did not place any record before the sanctioning authority Mr. Sinha. Since it has come in the testimony of this witness that the sanction order Ex. P/22 has been written by him after examining the entire documents and no document was placed before the sanctioning authority when the signature on the sanction order Ex. P/22 was taken, I am of the view that mechanically without application of mind the sanctioning authority signed the sanction order which cannot be said to be a valid sanction. The Supreme Court In the case of V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., in para 23 has held as under:

23. It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation.

Since there is no valid sanction and itns borne out from the testimony of P.W. 8-C.P. Shukla that without application of mind and without examining the documents Shri Sinha has signed the order of sanction Ex. P/22, I am of the view that the sanction is also not in accordance with law and the same has been accorded without application of mind.

I have gone through the reasonings recorded by learned Special Judge acquitting the respondent and I find those reasonings to be quite cogent as they are based on correct appreciation of evidence. Thus, I hereby extend my stamp of approval to those reasonings assigned by learned Special Judge.

Resultantly, this appeal is found to be bereft of any substance and the same is hereby dismissed. The respondent is on bail, his bail bonds are discharged.