
Ravi Kumar Rai Vs State Of Chhattisgarh

Criminal Appeal (CRA) No. 421 Of 2011

Court: Chhattisgarh High Court

Date of Decision: Sept. 5, 2018

Acts Referred:

Prevention Of Corruption Act, 1988 " Section 7, 13(1)(d), 13(2)#Code Of Criminal Procedure, 1973 " Section 161, 313

Hon'ble Judges: Rajendra Chandra Singh Samant, J

Bench: Single Bench

Advocate: Saurabh Dangi, Anil S. Pandey

Final Decision: Dismissed

Judgement

Rajendra Chandra Singh Samant, J

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 27.5.2011 passed by the Special Judge (Prevention

of Corruption Act), Dhamtari in Special Criminal Case No.1/07 convicting the accused/appellant under Section 13 (1) (d) read with Section 13 (2) and

Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act of 188') and sentencing him to undergo RI for 4 years with fine of Rs.1,000/-

and RI for 2 years with fine of Rs.1000/-, with usual default clauses, respectively. Both the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is this that son of complainant Tularam Gond had been granted lease for mining stones by Gram Panchayat Barari,

regarding which he had filed an application for grant of mining license in the office of Mining Department, Dhamtari, where applicant was posted as

Assistant Grade-III. It is alleged that appellant was stalling the approval of license and was demanding bribe of Rs.3,000/- The complaint being

disinclined to pay the bribe amount as demanded by the appellant, filed an application before the Superintendent of Police, Special Police

Establishment, Lokayukt at Raipur on 30.5.2002, subsequent to which a trap was organized. In presence of complainant and the witnesses a

demonstration of trap was given along with the instructions regarding the trap proceedings. The trap party reached the office of the appellant where

the complainant handed over the bribe amount Rs.2,000/- to the appellant and on receipt of signal by the complainant, the trap party rushed to the spot,

disclosed their identity. The hands, pant of appellant and currency notes were recovered washed in the solution of sodium carbonate, the colour of

solution turned pink because of the presence of phenolphthalein powder on it. Solution was preserved and sealed. Subsequent to that the documents

relating to the application submitted by the son of complainant were seized from the office of the appellant. Seized solutions were sent for examination

to the FSL from where report Ex.P-22 was received in which test for presence of phenolphthalein was found positive.

3. After completion of Investigation, the charge-sheet under Section 7 & 13 (1) (d) r/w 13 (2) of the Act of 1988 was filed against the appellant

before the concerned Court and accordingly the charges were framed against the appellant. The appellant abjured his guilt and sought trial. In order to

prove its case the prosecution has examined 16 witnesses in all. Examination of appellant under Section 313 of CrPC has been recorded, in which he

denied all the incriminating evidence available against him, pleaded innocence and false implication. However, he has admitted that he received the

money from the complainant but that was towards the payment of royalty due on the complainant and not as bribe. Factum of royalty due has also

been admitted by the complainant. He further submits that on making application for grant of license for mining stones, the complainant was ordered to

deposit royalty of Rs.2250/-, and the appellant had simply asked him to deposit the aforesaid amount but the complainant misinterpreted the same and

thought that the appellant is demanding bribe from him. He further submits that even at the time of handing over the alleged bribe amount, the

complainant had requested the appellant to accept the money towards royalty. He examined two witnesses in his defence.

4. After hearing the parties, the trial Court by the impugned judgment convicted and sentenced the appellant in the manner as mentioned in Para-1 of

this judgment.

5. It is submitted by the learned counsel for the appellant that the impugned judgment of conviction of the appellant passed by the trial Court is totally

erroneous and not based on any cogent and clinching evidence and thus the prosecution failed to prove its case beyond reasonable doubt. He further

submits that the prosecution had failed to prove the demand and acceptance of alleged illegal gratification because the prosecution has not examined

any independent witness in this regard. Appellant in his statement recorded under Section 313 CrPC has categorically stated that he received the

money from the complainant towards royalty as a sum of Rs.2,250/- was due and payable by the complainant. Even one receipt (Ex.D-1) in this

regard was also issued to the complainant by M.D. Manikpuri (DW-2). Thus, from the evidence adduced on behalf of the prosecution itself it is

apparent that the said amount has been received by the appellant from the complainant as an amount payable towards the royalty and not as a bribe.

6. It is further submitted that, not a single witness had accompanied the complainant as shadow witness. All the prosecution witnesses had arrived on

the spot after the alleged bribe money was handed over to the appellant. In Para-13 of cross-examination trap witness R.K. Pandey (PW-5) has

stated that he has no knowledge as to what was stated by the complainant to the appellant while handing over him Rs.2,000/- as he was not present

there at that time and as such, he is not a witness to taking and handing over the money to the appellant. Further, this witness has stated that at that

time the complainant has admitted that he had to deposit Rs.2250/- as royalty, hence, he is unable to say that the amount handed over to the appellant

was towards the payment of royalty or not. A suggestion in this regard was put to Vishwas Chandrakar (PW-7) in his cross-examination which he

has denied.

7. The complainant has also admitted that he was required to deposit Rs.2250/- as royalty and only after payment of such amount, the license to carry

out mining activities would be issued in his favour. He has further stated that as he does not have the money, therefore, he has not deposited the

royalty amount. He denied that he has handed over money to the appellant and a receipt of the same was issued to him. Another witness of spot

namely S.R. Bhagat (PW-12) has stated in his cross-examination that he has no knowledge about the conversation which took place in between the

complainant and the appellant at the time of handing over and taking the money. Even the investigating officer Navin Shankar Choubey(PW-15) has

also admitted in the cross-examination that none of the members of the trap party heard or overheard the conversation between the complainant and

the appellant regarding giving and accepting of Rs.2000/-.

8. It is submitted that L.K. Yadav (DW-1), Mining Inspector in the same Department, has stated before the Court that till 31.5.2002 the complainant

had not paid the royalty for issuance of license in his favour. This witness has produced the receipt book of the department in which on 31.5.2002

though a receipt of payment of Rs.2000/- has been prepared but the same has not been issued. This receipt was prepared on the instructions of

Incharge Mining Officer. Another defence witness M.D. Manikpuri(DW-2) has clearly stated that the complainant had paid the money towards

royalty and it is he who prepared the deposit receipt (Ex.D-1) on the instructions given by the in-charge Mining Officer. Hence, it is prayed that there

are ample circumstances available for disbelieving the statement of prosecution witnesses and hence the appellant is liable to be acquitted of all the

charges.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of Bal Krishna Sayal Vs. State of Punjab reported in (1987) 2

SCC 647; Krishna Chander Vs. State of Delhi reported in (2016) 3 SCC 10 8 and P. Parasurami Reddy Vs. State of Andhra Pradesh reported in

(2011) 12 SCC 294.

9. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is

submitted that the prosecution witnesses have clearly stated in their statement before the court that the amount offered by the complainant to the

appellant was in the form of bribe. There had been no royalty due to the complainant as the complainant himself has stated that he had already paid

the royalty through the challan and document showing the said fact i.e. bank challan, is filed as Ex.P-15. L.K. Yadav (DW-1) has admitted in his

cross-examination that he has no knowledge about the demand of bribe made by the appellant from the complainant. In the cross-examination this

witness has admitted that M.D. Manikpuri (DW-2) has no authority to write the royalty payment receipt unless and until directed by the higher

officers and the royalty is deposited in the bank through challan. He has further admitted that there was no order of the Mining Officer to issue such

receipt in favour of the complainant. Under these circumstances, it cannot be said that the appellant has been able to make out a case of his acquittal

as the prosecution has proved its case beyond doubt.

10. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.

11. Tularam (PW-10) is the complainant. He has stated that he has submitted an application along with relevant documents for grant of mining license.

After depositing the application, when he contacted the appellant for processing his application for issuance of license for mining stones, the appellant

demand Rs.4000/- as bribe from him. Firstly, he paid Rs.2000/- to the appellant and subsequent to which he received authorization papers and he

started mining work. Thereafter, the appellant had again demanded Rs.2000/- from him. Hence, he filed the complaint (Ex.P-5) in the office of CBI,

Raipur. He has further stated about the demonstration of trap proceedings and thereafter he along with the trap party reached the office of the

appellant. Thereafter he went to the appellant and asked him to prepare the papers whereupon the appellant asked him as to whether he has brought

money or not. On this, he handed over the tainted currency notes of Rs.2000/- to the appellant which was accepted by him and kept in the pocket of

his full pant. He has further stated that on a predecided signal given by him, the trap party reached the spot, caught hold of the appellant and

recovered the bribed money from the pocket of the appellant. Thereafter the trap party completed the trap proceedings. He has further stated that he

has already deposited the royalty due and payable by him through bank challan vide Ex.P-15. In the cross-examination, this witness has denied that a

receipt was prepared against the deposit of Rs.2000/- . In para-13 of the cross-examination when this witness was confronted with 'A to A' part of his

statement (Ex.D-1), he denied making of such statement. Though this witness has stated certain other things in his statement recorded under Section

161 CrPC, but the same do not find place in his statement recorded in the Court.

12. Tularam (PW-10) is the only witness of the conversation that took place between the complainant and the appellant at the time of handing over the

money. Other witness of trap party R.K. Pandey(PW-5) has stated in his Court statement that he arrived on the spot only after the signal was given

by the complainant indicating that the bribe money has been given to the appellant. There are other witnesses who were present with the trap party

i.e. Pawan Kumar Pathak PW-4, G.R. Banjare PW-6 & Vishwas Chandrakar PW-7, and according to them also, they arrived at the spot immediately

after the signal given by the complainant. Hence they are also not the witnesses of conversation that took place between the complainant and the

appellant. No statement was given by the appellant before these witnesses that the money that was handed over to him by the complainant was for

the purpose of payment of royalty.

13. Main issue that has been raised in this appeal is that the amount received by the appellant was towards the payment of royalty and regarding

which the evidence on record is scrutinized to ascertain whether the defence has been able to prove the said fact or not.

14. Tularam (PW-10) has stated before the court that he has already the royalty of Rs.2250/- vide bank challan Ex.P-15. Perusal of document Ex.P-

15 would go to show that it is a ""saving-bank pay in slip"" by which an amount of Rs.2250/- was to be deposited in the saving bank account of Jila

Panchayat concerned. The pay-in-slip form and counterfoil both have been seized and produced before the Court and a glance of the same would

reveal that this pay in slip form was not presented in the bank for making payment as the seal of the bank is missing on the form and the counterfoil.

Thus, it appears that the statement made by Tularam (PW-10) that he has already deposited the royalty amount through bank challan does not appear

to be true.

15. Secondly, the denial made by Tularam (PW-10) regarding contents of statement recorded under Section 161 CrPC, exhibited as Ex.D-1, and the

statement as present in 'C' file of the record of the trial court goes to show that after handing over the bribe money, the complainant was given the

form of pay in slip for depositing Rs.2,250/- as royalty. It is also stated by him in his previous statement that his signature was also obtained in the

challan form for issuance of pit pass book and Form B was handed over to him to make payment accordingly. Tularam (PW-10) has categorically

denied in his cross-examination that he has not made any statement under Section 161 CrPC, whereas the investigating officer has made a clear

statement that he has recorded statement of complainant under Section 161 CrPC in the course of investigation. This version of the investigating

officer has not been challenged in his cross- examination. Statement under Section 161 of CrPC of complainant is available on record in file 'C' gets

support from the statement given by Navin Shankar Choubey (PW-15). Hence, under these circumstances, the denial of Tularam (PW-10) appears to

be having no effect and there is no reason to hold that his statement under Section 161 CrPC was not recorded during the course of investigation.

16. Though the statement made by Tularam (PW-10) regarding payment of royalty through bank challan has been found to be false, but the fact

remains that at the relevant time an amount of Rs.2,000/- was given to the appellant by the complainant. Therefore, the circumstances in which the

amount has been recovered and seized are very important in this case. Navin Shankar Choubey (PW-15) has stated that on receipt of predecided

signal by the complainant, the trap party went inside the office of the appellant and caught hold of the appellant. He has further stated that when the

fingers of appellant were dipped in the solution of sodium carbonate, the colour of solution turned pink. The solution was preserved and sealed.

Secondly, on being asked by the trap party as to where he has kept the money given to him by the complainant, the appellant informed that he has kept

the same in the right pocket of his full pant. One of the trap witnesses searched the right pocket of the full pant of appellant, took out Rs.2,000/-,

which were in the denomination of Rs.100 each and on washing these currency notes in the solution of sodium carbonate, the colour turned pink. This

solution was also preserved and sealed. The appellant was asked to take out his full pant and thereafter right pocket of his pant was washed in the

solution and again the colour turned into pink. The solution was preserved and sealed. In the cross-examination, no question has been put to this

witness to challenge his statement made in the examination-in-chief about the method in which alleged bribe money was recovered from the pant of

the appellant, which shows that bribe money travelled from the hands of complainant to the hands of appellant and then to the pocket of the appellant.

17. Before arriving at any conclusion it would be relevant to refer to the statement of defence witnesses also. DW-1 L.K. Yadav has produced the

receipt of office dated 31.5.2002 (Ex.D1-) showing receipt of Rs.2,000/- from the complainant. It appears that this receipt has been only written but

not issued to the complainant. In the cross-examination this witness has admitted that the concerned Clerk is not authorized to receive advance royalty

amount and issue the receipt of the same, unless & until order in this regard has been obtained from the higher official. In this case, no such order was

obtained from the higher officer. He has further admitted that amount of royalty is deposited in the bank through challan. He has further stated that if

any bribe had been demanded by appellant then he is not aware about the same.

18. M.D. Manikpuri (DW-2) has deposed that on the date of incident the complainant came to the applicant and when the appellant asked the

complainant to deposit the royalty amount of Rs.2250/-, he replied that he is having only Rs.2000/- and not Rs.2250/- and he requested him to accept

the same. He has further deposed that thereafter he was asked by Shri Ghanshyam Singh Dhruw, the then Mining Officer, to accept the said amount

and make an entry in this regard in the money receipt and accordingly, this witness has written money receipt (Ex.D-1), which contains signature of

the complainant also. Thereafter, the trap party came inside the office. In the cross- examination this witness has admitted that order to accept

Rs.2000/- in place royalty of Rs.2250/- has not been obtained from the in- charge officer of the mining department. He has shown ignorance about the

rules allowing deposit of royalty fee in part instead of full royalty amount. He has further admitted that no specific order in this case had been obtained

from the in-charge officer to receive the royalty in installment. He has further stated that he cannot say that receipt has been issued afterwards in

order to show that Rs.2000/- was the royalty amount and not the bribe amount.

19. In this case it cannot be said that non-presence of any independent or shadow witness at the time of handing and taking over of bribe money is

fatal to the prosecution. Reliance placed by the counsel for the appellant on P. Parasurami Reddy's case (supra) is of no help to him because in that

case the currency notes were recovered from the possession of co-accused coupled with the fact that no shadow witness had accompanied the

complainant. Similarly, in Balkrishna's case (supra) the accused demanded a bribe of Rs.100/- from the complainant for obtaining an order of waiver

of penal rent of the official residence occupied by him but the independent witnesses of that case did not speak as to what transpired in conversation

between the bribe giver and the appellant.

20. Hence in this case the question which arises for consideration, in the light of evidence discussed herein above, is whether the appellant has

received the money towards the payment of royalty or it is an attempt by the defence to save the appellant from clutches of law.

21. On close scrutiny of the evidence available in record it appears that the complainant had approached the appellant and handed over tainted

currency notes which the appellant has received and pocketed in his full pant pocket. None of the prosecution witnesses has admitted that the amount

given by the complainant was towards the payment of royalty. It is clearly established that the tainted amount was recovered from the pocket of the

pant of the appellant. Had it been the royalty amount, it ought to have been kept in the drawer of the office where the received amount are usually

kept. Secondly, the amount should have been with the person who is authorized in the office to accept the same. According to evidence adduced by

the defence itself, it appears that the authorized person to receive the royalty amount was M.D. Manikpuri (DW-2) and not the appellant. Although it

has been stated by M.D. Manikpuri (DW-2) that the in-charge officer has authorized him to receive the money but no such authorization is there on

the receipt (Ex.D-1). On the contrary this receipt has been cancelled under the signature of the in-charge officer. Hence this signature, which is

purported for cancellation, cannot be regarded as signature authorizing to accept money. Further, this receipt book was not presented before the

investigating officer at the time of trap proceedings. The Investigating Officer (PW-15) has stated in his examination-in-chief that after the trap

proceedings, the entire documents showing action taken on the application of the complainant's son namely Kamal Narayan Dhruw (PW-9) submitted

for grant of license were obtained from the in-charge Mining Officer and seized accordingly. The omission to present such receipt at that time by the

in-charge officer is relevant and cannot be overlooked because it raises question of existence of such receipt like Ex.D-1 at the time of seizure of

other documents connected with the case of the son of the complainant from the mining officer. Hence, on the basis of the above findings, it appears

that the evidence regarding the circumstances at the time of trap procedure are strong in favour of the prosecution and defence has failed to establish

it's case.

22. The explanation that has been tried to put up in the defence is neither sufficient nor supported with clear and cogent evidence so as to believe the

probabilities of such things as having stated in defence.

23. After considering the entire material available on record against the appellant, this Court is of the view that as the appellant has failed to establish

his defence before the trial Court, therefore, it is difficult to hold that the trial Court has committed any illegality or infirmity in passing the impugned

judgment warranting interference by this Court in exercise of its appellate jurisdiction.

24. In the result, the appeal being meritless is liable to be and is hereby dismissed.