

(2018) 09 CHH CK 0277

Chhattisgarh High Court

Case No: Criminal Appeal No. 1854 Of 1999

Devendra Kumar Verma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Sept. 18, 2018

Acts Referred:

- Prevention Of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2)
- Code Of Criminal Procedure, 1973 - Section 161, 313, 437A

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: T.K. Tiwari, N.K. Sharma

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 7 of the Act of 1988,"Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default simple imprisonment for 3 months

Under Section 13(1)(d) read with Section 13(2) of the Act of 1988","Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default simple imprisonment for 3 months

The jail sentences are directed to run concurrently

animals, he was also entitled to do private practice as stated by Dr. S.K. Pandey (DW1). Earlier also, the Appellant had treated the animals of the",

Complainant whose fees was due to be paid to him by the Complainant. The Appellant had demanded the said due fees from the Complainant. He had, not made any demand for bribe. The death certificates asked by the Complainant were prepared by him at his house and he had demanded the fees, from the Complainant for preparing the said certificates. The Complainant had kept amount of arrears of fees itself on the table of the Appellant and, on being washed the hands of the Appellant in the solution of sodium carbonate, colour of the solution turned into pink because he had lifted up the", tainted currency notes from the table on being asked by the trap party. He has further submitted that there is nothing on record on the basis of which it, could be established that the Appellant had made demand for bribe in any manner or had accepted any illegal gratification from the Complainant. The, amount of Rs.300/-, which were kept by the Complainant on the table of the Appellant, were of fees which was payable to him by the Complainant", from before. He also submitted that the sanction for prosecution of the Appellant reveals that there had been no application of mind in its issuance.,

Therefore, the said sanction cannot be treated as a valid sanction. Thus, the Appellant deserves to be acquitted of the charges framed against him.",

6. On the other hand, Learned Counsel appearing for the State opposed the arguments raised on behalf of the Appellant and supported the impugned", judgment. He submitted that the demand and acceptance of the illegal gratification has properly been proved by the prosecution and, therefore, the",

Appellant has rightly been convicted and sentenced by the Trial Court.,

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.,

8. With regard to validity of the order of sanction (Ex.P15) for prosecution of the Appellant, A.K. Singh (PW12), Assistant Grade-I of the Law and",

Legislative Affairs Department has deposed that vide Ex.P15, sanction for prosecution was accorded by the then Additional Secretary of the Law and",

Legislative Affairs Department. The sanction order (Ex.P15) clearly reveals that after careful examination of the material available, the sanctioning",

authority has accorded the sanction for prosecution. The order of sanction also consists brief facts of the offence which shows that after considering,

the material placed before the sanctioning authority, he has accorded the sanction order (Ex.P15). Therefore, the argument that the order of sanction",

for prosecution of the Appellant is not a valid order is not sustainable.,

9. Complainant Jairam Prasad (PW5) has stated that in the years 1989 and 1990, he had purchased two cows one by one by obtaining loan from the",

Bank in the name of his wife. He has further stated that one of the cows died due to an accident within 10-15 days of its purchase and the other cow,

died due to illness within 4-5 days of its purchase. Intimation of death of those cows was sent by him to the Bank. Thereafter, he had also got a",

panchnama of death of both the cows prepared vide Ex.P6 and P7. His above statement is duly corroborated by his wife Kamla (PW1), Branch",

Manager of Gramin Bank, Raipur Vijay Kumar Verma (PW2), Branch Manager of New India Insurance Company Kripal Singh (PW3), Sabhapati",

Pandey (PW4) and Vaidyanath Jha (PW6), who are the witnesses of aforesaid panchnama (Ex.P6 and P7). From the above, it is clear that",

Complainant Jairam Prasad (PW5), for purchase of the two cows, had obtained a loan from the Bank in the name of his wife. After the purchase,"

both the cows died and their death was also intimated by the Complainant to the Bank.,

10. Jairam Prasad (PW5) has further stated that for the purpose of getting the amount of insurance against death of the two cows, he had visited the",

Appellant 5-6 times for issuance of death certificates of the cows. The Appellant had told him that the work will not be done without giving money.,

On being asked that how much money will be required, the Appellant had told him that Rs.300/- will be required for the purpose of preparing death",

certificates. Thereafter, the Complainant visited the Vigilance Department and made a written complaint (Ex.P8). He also submitted currency notes",

of Rs.300/-. Those currency notes were smeared with some powder and the same were kept in the right pocket of the shirt worn by him. He was also,

instructed not to touch those notes kept in his pocket. He has further stated that he along with the trap party went to Dharsinva. He was sent alone to,

the Appellant. He went to the hospital where he came to know that the Appellant had gone to Raipur and will reach back soon. He began to wait for,

the Appellant there by sitting on a chabutara (platform). 20-25 minutes thereafter, the Appellant reached there and asked him whether the",

arrangement has been made or not. He replied the Appellant that the arrangement has been made. On this, the Appellant asked him to come his house",

along with him. He went to the house of the Appellant along with him. The Appellant, after reaching home, sat on a chair and asked the Complainant",

that if he had brought the money he should give him the same. On this, the Complainant took out the tainted money from his pocket and gave the same",

to the Appellant in his hands to which the Appellant kept over the table placed before him. Thereafter, the Appellant started preparing documents. At",

that time, the trap party entered the room of the Appellant and asked him where was the money kept by him. The Appellant replied that the money",

was not there. On being asked from the Complainant, he told that the Appellant had kept the tainted money under a paper. On being removed the",

paper, the tainted currency notes were found there. The currency notes were dipped into a solution of sodium carbonate on which colour of the",

solution turned into pink. Hands of the Appellant and the hands of the Complainant were also washed in different solutions of sodium carbonate on,

which colour of the solutions turned into pink. In his cross- examination, this witness has denied the fact that the Appellant had asked him whether the",

arrear of fees of Rs.300/- had been arranged by him or not. He also denied the fact that when he had gone to the Appellant to give the tainted money",

at that time also, the Appellant had asked him to give him the arrear of fees of Rs.300/-. He also denied the fact that in his statement recorded under",

Section 161 of the Code of Criminal Procedure, he had made such statement, but he has virtually made such statement in the said statement (Ex.D1)",

recorded under Section 161 of the Code of Criminal Procedure. This witness has also stated in paragraph 13 of his cross-examination that after giving,

the tainted money to the Appellant and thereafter giving of a signal by him to the trap party, the trap party had entered the room of the Appellant.",

11. Both the panch witnesses Kejaram Thakur (PW7) and R.N. Gupta (PW9) have only supported the facts that they had been called in the office of,

Lokayukta. There they had met with the Complainant and they were given the written complaint (Ex.P8) to read and verify. They have also supported,

the facts that the Complainant had submitted currency notes of Rs.300/- which were smeared with phenolphthalein powder, a demonstration of trap",
was given and a preliminary panchnama was also prepared.,

12. Kejaram Thakur (PW7) has further stated that they had gone to Dharsinva along with the trap party. There the Complainant was sent to the,
hospital of the Appellant. The Complainant entered the room of the Appellant and trap was done there itself. He has further stated that on being asked,
from the Appellant, he refused about receiving of any money. At that time, he had not seen any money in the hands of the Appellant. On being asked",
from the Complainant, he told that the money was kept under a file put on the table and the Appellant, after lifting up those currency notes from the",
table, had given the same to the trap party. This witness has further stated that the Appellant had continuously been telling till end that he had not",
received any bribe.,

13. As stated by other panch witness R.N. Gupta (PW9), he had gone to Dharsinva along with the trap party. Thereafter, he had been sitting in the",
jeep itself. After 1 hour, on being called, he had gone to the house of the Appellant. He has further stated that the tainted money was kept under some",
papers on a centre table and the Appellant had lifted up the tainted notes and given the same to the Deputy Superintendent of Police. In paragraph 8,
of his cross- examination, he has further stated that when the Appellant lifted up the tainted notes, at that time, the Appellant had told that the money",
was of arrears of fees receivable by him from the Complainant and the Complainant had kept those notes there.,

14. Inspector Rajeshwar Singh (PW13) is the Investigating Officer of the offence in question. He has stated that on receiving the written complaint,
(Ex.P8), he called panch witnesses and showed them the written complaint (Ex.P8). The panch witnesses verified the complaint from the",
Complainant. He recorded unnumbered FIR (Ex.P16). The Complainant had brought 1 currency note of Rs.100/- and 4 currency notes of Rs.50/-,
each, whose numbers were recorded in the preliminary panchnama (Ex.P9). Head Constable Mannulal smeared phenolphthalein powder on those",
currency notes. Thereafter, those notes were kept in the right pocket of the shirt worn by the Complainant. Necessary instructions were given to the",

Complainant. A demonstration of trap was also given. Different solutions of sodium carbonate were prepared. Thereafter, the trap party proceeded",

towards Dharsinva. The Complainant waited for the Appellant by sitting on a chabutara (platform) constructed near the hospital. The Appellant,

reached there after sometime. A talk took place between the Appellant and the Complainant. Thereafter, both went towards the house of the",

Appellant. After ½ hour, the Complainant gave a signal to the trap party. Thereafter, he entered the house of the Appellant. The trap team gave",

their introduction to the Appellant. The Appellant got frightened. On being asked, the Appellant admitted accepting the money and told that he had",

kept the money under a carbon book of insurance company put on the table. Hands of the Appellant were washed in a solution of sodium carbonate,

on which colour of the solution turned into pink. Panch witness Kejaram Thakur (PW7) lifted up the notes from the table and counted them. On being,

compared the numbers of those tainted notes with the numbers already noted in the preliminary panchnama (Ex.P9), the numbers matched. The",

recovered notes were dipped into another solution of sodium carbonate on which colour of the solution turned into pink. Hands of Kejaram Thakur and,

hands of the Complainant were washed in different solutions of sodium carbonate. After the wash, colour of the solutions turned into pink. A",

panchnama of the whole proceedings was prepared vide Ex.P10. The notes and other documents were seized vide Ex.P11. During investigation, he",

also obtained appointment order (Ex.P22) and posting order (Ex.P23) of the Appellant. He sent unnumbered FIR (Ex.P16) to Bhopal. The same was,

returned as numbered FIR (Ex.P24). The seized notes and the used solutions were sent to the Forensic Science Laboratory for examination vide,

Ex.P19. FSL Report is Ex.P21B. The report is positive. This witness has admitted the fact that in the statement recorded under Section 161 of the,

Code of Criminal Procedure (Ex.D1), Complainant Jairam Prasad (PW5) has stated that at the relevant time the Appellant had asked him whether",

arrangement of fees has been made or not and the Appellant had further asked him to give him the amount of desired fees.,

15. In this case, it was the defence of the Appellant that being a government doctor for treatment of animals, he was also permitted to do private",

practice. He had treated the cows of the Complainant earlier, whose fees was to be received from him and he had demanded the arrear of his fees",

itself from him and he had been given the arrear of fees itself by the Complainant. Neither he demanded any bribe from the Complainant nor did he,

receive any amount as bribe from him. Dr. S.K. Pandey (DW1) was Deputy Director of Pashu Chikitsa Vibhag. He has categorically stated that,

since the Appellant was a veterinary graduate, he was allowed to do private practice before and after the duty hours. Shakuntala Pandey (DW3) is",

the neighbour of Complainant Jairam Prasad (PW5). She has stated that she and the Complainant had cattle for whose treatment the Appellant was,

visiting their houses. She has further stated that cow of the Complainant was ill, therefore, the Appellant had treated it.",

16. On minute examination of the above evidence, it is clear that though the Appellant was posted as a veterinary doctor in the government hospital at",

Dharsinva, as stated by Deputy Director Dr. S.K. Pandey (DW1), the Appellant was also permitted to do private practice before and after duty hours",

and as stated by Shakuntala Pandey (DW3) earlier also the Appellant had treated the cattle of the Complainant. Though Complainant Jairam Prasad,

(PW5) has denied the fact in his Court statement that the Appellant had asked him to give the arrear of fees, this fact is mentioned in his statement",

(Ex.D1) recorded under Section 161 of the Code of Criminal Procedure. From the statements of both the shadow (panch) witnesses Kejaram Thakur,

(PW7) and R.N. Gupta (PW9) also, it is clear that no demand was made by the Appellant or no money was paid to the Appellant in their presence.",

Allegedly, the said demand and acceptance was made in the room of the house of the Appellant in the evening hours. But, panch witness Kejaram",

Thakur (PW7) has stated that the transaction between the Appellant and the Complainant was done in the room of the hospital. Other panch witness,

R.N. Gupta (PW9) has stated that he was sitting in the jeep and after 1 hour, he was taken to the house of the Appellant. Thus, it is clear that both the",

panch witnesses were available at the spot is doubtful. As stated by Complainant Jairam Prasad (PW5), panch witnesses Kejaram Thakur (PW7) and",

R.N. Gupta (PW9) and the Investigating Officer Rajeshwar Singh (PW13), the tainted money was kept under a paper placed on the table and on",

being asked by the trap party, that tainted money was lifted up by the Appellant and given to the trap party. In these circumstances, if the solution, in",

which the hands of the Appellant were washed, turned into pink colour, it is natural. If, for the sake of argument, it is considered that the Appellant",

had accepted the sum of Rs.300/-, the same was demanded and accepted by him as an illegal gratification or a bribe has not been established by the",

prosecution beyond reasonable doubt. Therefore, in my considered opinion, the offence alleged against the Appellant under Sections 7 and 13(1)(d)",

read with Section 13(2) of the Act of 1988 is not proved beyond reasonable doubt. Looking to the facts and circumstances of the case and the,

evidence adduced by the prosecution, the Appellant is entitled to get benefit of doubt.",

17. In the result, the appeal is allowed. The judgment under challenge is set aside. The Appellant is acquitted of the charges framed under Sections 7",

and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.",

18. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of the provisions,

contained in Section 437A of the Code of Criminal Procedure.,

19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,