(2006) 08 JH CK 0034

Jharkhand High Court

Case No: Criminal Appeal No. 159 of 1998 (R)

Sardar Birendra Singh	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision: Aug. 14, 2006

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 20, 7

Citation: (2007) 1 EastCric 245 : (2007) 1 AIRJharR 209 : (2007) CriLJ 1070 : (2006) 4 JCR 225

Hon'ble Judges: D.P. Singh, J

Bench: Single Bench

Advocate: B.M. Tripathi and K.S. Nanda, for the Appellant; A.K. Kashyap, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Singh, J.

This appeal is directed against the judgment of conviction and order of sentence dated 25.5.1998 passed in Special Case No. 1/1989/(Patna Vigilance P.S. Case No. 2/1989), whereby and whereunder the learned Special Judge Vigilance, Ranchi held the appellant guilty under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and convicted and sentenced him to undergo RI for one year on each count and has also imposed a fine of Rs. 500/- and in default of payment, to further undergo SI for three months.

2. The factual matrix leading to this appeal are as follows:

PW-1 Bhagwan Rai, a retired head constable of BMP, Bihar was awaiting final accounting of GPF contributed by him during his services. As stated, the complainant retired from Ranchi and his GPF accounts were pending in the office of Ranchi District Provident Fund office. It is further alleged that the appellant used to deal with the file of the complainant, who demanded bribe to prepare the correct account-sheet of the complainant. The complainant reported the matter to Vigilance

Cell, Ranchi on which Patna Vigilance P.S. Case No. 2/1989 was registered. The said complaint petition was forwarded to Deputy-Superintendent Cabinet (Vigilance) Department, Ranchi for verification and needful. The matter was enquired upon by the Vigilance Sleuth Sri Garbret Hambram, SI on 6.1.1989. In the afternoon, Mr. Hembram went along with the complainant Bhagwan Rai to the District Provident Fund office where he was indicated that the appellant Sardar Birendra Singh sitting in the office, was the person who has demanded bribe. As per Sri Hembram, the complainant informed the appellant that he will manage the money on Tuesday, after which both of them went out and the appellant asked the complainant for Rs. 1000/- to be paid by Tuesday and only after payment he would clear the GPF account.

3. The matter was reported to DSP vigilance, Ranchi in writing by Sri Hembram, vide Ext. 6. It was further decided that a trap be laid to catch the appellant red-handed while accepting the bribe money, for which a team was instituted. According to the prosecution version, in the morning of l0th January, 1989, the raiding team assembled in the office of the Dy. S.P. (Vigilance) situated at Nepal House, Ranchi, where the formalities of demonstration, use of Phenol-phthalein on G.C. notes as well as preserving residues of finger wash on being turned pink were performed before the complainant and FW-2, Manohar Singh Biswa, PW-5, P.R. Das, FW-8 Garbret Hambram, PW-9, Maheshwar Prasad Mishra, Special Magistrate, Vigilance, PW-14, Bhagwan Singh and PW-16 J.D.H. Guriya, D.S.P. The raiding team went along with the complainant, in the afternoon, to the district provident fund office, Ranchi. It is further stated that when the appellant met the complainant Bhagwan Rai in the office both of them came out to a tea stall situated outside the office premises. Three witnesses were present near the appellant and the complainant, when money was handed over to the appellant. PW-1 handed over 5 tainted Rs. 100/- currency notes to the appellants, who counted it and kept the same in his hand. Thereafter the complainant moved and when the appellant was returning to his office the raiding party confronted him with the allegation that he has received the bribe money. It is further stated that tainted 5 notes of Rs. 100/- were recovered from the right hand of the appellant by PWs 2, 5, 8, 9, 10. 14 and 16. According to the prosecution version, during the seizure of the money, two independent witnesses Wakil Prasad Sharma, PW-11 and Mohan Lal, PW-12 were present, who were informed regarding the raid and their signatures were obtained on the seizure list. It is further stated that when the raiding team washed the hands of the appellant, finger wash became pink. The residue was preserved in two beakers and PW-11, an assistant of Forest Department, has supported the prosecution case while PW-12 has turned hostile.

4. The appellant was arrested and produced before the Vigilance Judge along with memo of seizure and other papers. The case was investigated and finally charge-sheet was submitted against the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The trial was initiated as

Special Case No. 1/89 after framing of charges against the appellant on 11.6.1991, to which the appellant pleaded not guilty and claimed false prosecution. The trial Court after examining witnesses, found and held the appellant guilty and convicted and sentenced him as aforesaid.

5. The present appeal has been preferred on the ground that the trial Court has not considered the defence of the appellant properly. It is also asserted that contradicted version of the prosecution has been accepted, where as the whole prosecution case suffered from improbability. It is also submitted that the version of PW-1 is contradicted by PW-8 Garbret Hambram, on the basis of which the present prosecution case has been initiated. It is also asserted that the evidences on the point of offer and acceptance of bribe do not support the prosecution version. According to this memo of appeal, further the record of GPF account of complainant Bhagwan Rai shows that there was no need to ask for any bribe as the matter was pending before the Patna office and he has not demanded any bribe. It is also asserted that the entire manner in which the appellant has been arrested proves that defence version is correct.

6. Learned Counsel for the vigilance opposed this contention on the ground that when tainted money has been recovered from his person, the presumption u/s 20 of the Prevention of Corruption Act shall be drawn against the appellant. He further relied upon State of West Bengal Vs. Kailash Chandra Pandey, .

7. The prosecution case stated by PW-1, Bhagwan Rai, is that appellant Sardar Birendra Singh, an assistant in District Provident Fund, Ranchi has demanded bribe to provide the correct accounts due in the GPF account of the complainant. It is also stated that after negotiation the amount of bribe was fixed at Rs. 500/- to be paid on 10th January, 1989. The defence has brought on record through DW-1 that the accounts of the complainant was not correct and the provident fund office was corresponding with AG Bihar as well BMP Bihar to get the missing account of deduction made in GPF to provide him with the correct statement, vide Ext. A. This Ext. A shows that a latter was written on 22.12.1988 by the District Provident Fund Officer Biswanath Prasad and ultimately on 18.1.1990 corrected statement was received. According to this defence witness, lastly on 9.4.1990 payment was made to the complainant. As such, the question of demanding bribe could not arise. This witness has admitted in cross-examination that the appellant used to deal with the file before his arrest and the file for payment to the complainant was pending since 8th August, 1988. It has further been admitted that the balance-sheet was received on 11.8.1988.

8. In this context the statement of the complainant is specific that when he approached the appellant for getting the account upto date, he demanded bribe. PW-1 has further sated that how he reported this mater to vigilance on 6th January, 1989 and verified by PW-8, vide Ext. 6, clearly mentions that the appellant demanded bribe and it was agreed that payment would be made on Tuesday i.e. on

10th January, 1989. This report forwarded to Vigilance, Patna for registration of Vigilance Case No. 2/89. vide Ext. 3/A. It further mentions that PW-16, JDH Guriya was endorsed to Investigate the case on 9th January, 1989. Thereafter SP Vigilance, vide PW-4, constituted a raiding team. PW-4 was the DSP Vigilance, Patna. The constitution of the raiding party has been proved by PWs 2, 5, 8, 9, 14 and 16. According to these witnesses, on 10.1.1989 they assembled in the Vigilance Office, Nepal House at about 10 a.m. where the complainant produced 5 GC currency notes of Rs. 100/-, numbers of which were noted down in the memorandum of GC notes and thereafter all the notes were treated with phenolphthalein powder. This GC notes memorandum has been marked Ext. 2. There witnesses have further stated that those phenolphthalein treated notes were handed over back to Bhagwan Rai with the instruction that the same notes should be given to the appellant when he demands money. According to these witnesses, thereafter the raiding team left to District Provident Fund Office, Ranchi where the informant met the appellant inside the office. It is further stated that the appellant along with complainant came out of the office and at a tea shop, in presence of PWs 8 and 16, the appellant demanded bribe money, which was handed over to him by PW-1. It is further stated, that the appellant thereafter assured the complainant that his work will be done and left the place but while the appellant was returning back along with those tainted money in his hand, he was arrested. These witnesses have specifically stated that PW-8 caught hold right hand of the appellant while PW-16 caught his left hand. Thereafter all other members of the raiding team arrived there. According to these witnesses, the appellant''s hands were washed in presence of PWs 11 and 12, two independent persons. The numbers of those five notes were tallied with the numbers already noted down in the memorandum and the seized notes were produced before PW-11, who identified his signatures on them, vide Exts. 2/M to 2/Q. The statements of raiding team along with independent witnesses show that Rs. 500 in five currency notes of Rs. 100/- were recovered from the possession of the appellant by the raiding team in the forenoon of 10.1.1989, which numbers were earlier noted down by the trap team in the office of DSP vigilance, Ranchi.

9. The recovery of tainted currency notes has not been disputed by the appellant. The defence has stated that the money was not demanded as there was no occasion for demand of money because the defective statement of accounts was available in the file of the complainant, for which correspondences have been started. It is also admitted that the first correspondence is said to have been made by District Provident Fund Officer on 22.12.1988. The complainant has asserted that he was being harassed from before and only when he agreed to pay the bribe, the appellant has assured him to initiate the process for preparation of the statements. This fact that correspondence was made before this occurrence was not available with the file of the complainant, which was seized on the same day of 10.1.1989. PW-16, who has investigated the case, after arresting the appellant in the manner stated above, vide para 18, has seized the said file and proved the seizure list. This

witness has admitted in cross-examination that he has not examined the file of the complainant in the office of the appellant before constituting the raiding party. Certain defects have been pointed by the defence regarding time of departure, noting of the numbers of GC notes etc. and memorandum prepared in presence of SP Vigilance. It is further pointed out that before searching the appellant, he has not given his own search neither the paint worn by the appellant was seized. The defence has relied upon these minor points missing in the investigation and asserted that prejudice has been caused. However this fact has been proved by PWs 1, 2, 5, 8, 9, 14 and 16 that when appellant was arrested by them, he was carrying five tainted GC currency notes of Rs. 100/- in his hand, which were earlier produced by the complainant before the raiding team and numbers of notes have been noted down. This has also come on record that numbers of seized notes tallied with the notes already noted in the memorandum of GC notes. In this context the prosecution has relied upon 2005 (12) SCC 641 and stressed that presumption u/s 20 of the Prevention of Corruption Act is applicable, as the tainted notes were recovered from the possession of the appellant for which he has not explained.

10. I further find from the materials on record that sanction for prosecution has been validly obtained against the appellant, as per Ext. 10, brought on record by PW-17. PW-18 has further proved that appellant has produced the file of the complainant in his presence on 10.1.1989 to the raiding team. He has identified his signature on the seizure list vide Exts. 10/1 and 10/2. Independent witness PW-11 has supported the seizure of the tainted notes from the possession of the appellant. PW-9 is the Vigilance Magistrate, who was present during this raid. All these facts have been discussed by the learned trial Court, vide paras 8, 9 and 10 of the judgment. According to the learned trial Court, in presence of many persons including the raiding team GC notes were recovered from the possession of the appellant and the number of notes tallied from the GC notes memorandum, Exts. 2 and 3, which has been supported by independent witness, PW-11 with his signature on the recovered GC notes, which marked as Exts. 2/M to 2/Q. Those GC notes have been further brought on record as material Exts 1 to 1/4. He has further discussed that after raid procedure, hands of the appellant were washed and preserved the residue wash, which turned pink in two beakers in presence of witnesses. The trial Court accordingly relied upon the prosecution version and found arid held the appellant guilty for accepting bribe and convicted and sentenced him as aforesaid.

11. In view of the facts stated above, the prosecution has been able to bring home the recovery of five tainted GC notes of Rs. 100/- from the possession of the appellant on 10.1.1989 in presence of independent witnesses. The facts of the present case appears to be covered by decision cited by prosecution and relied upon, reported in (2005) 12 SCC 641. In that case raiding team during search of the house of the appellant has recovered tainted money from a register and the appellant could not explain it reasonably. Their Lordships have been pleased to hold that in such facts and circumstances presumption u/s 20 of Prevention of Corruption

Act, 1988 is attracted.

12. After going through the materials on record, I find that the prosecution in the present case has been able to prove the charges against the appellant that he demanded and accepted Rs. 500/- as bribe on 10.1.1989 in presence of witnesses. The materials on record do not support the defence version that he was falsely implicated. It has not been explained by the defence that in which circumstance the GC notes already noted down in the memorandum of GC notes were recovered from the possession of the appellant and the hand wash turned pink in presence of independent witnesses. In such cases presumption of guilt has to be drawn against the appellant u/s 20 of P.C. Act, 1988. Accordingly I find and hold that the conviction of the appellant by the trial Court is fit to be confirmed and maintained.

13. In the result, I find no merit in the present appeal, which is dismissed. The conviction of the appellant is accordingly confirmed and bail bonds cancelled forthwith with direction to surrender before the trial Court within a month to serve the period of sentence, failing which the trial Court will take required steps for his arrest. Let a copy of this judgment along with LCR be remitted back to the trial Court for information and needful.