

Mukhdeo Singh Vs State of Bihar

Court: Jharkhand High Court

Date of Decision: Oct. 31, 2002

Acts Referred: Prevention of Corruption Act, 1947 " Section 5(2)

Citation: (2003) CriLJ 626 : (2003) 1 EastCriC 58 : (2002) 50 BLJR 2399

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: T.R. Bajaj, A.S. Dayal and Randhir Singh, for the Appellant; Rajesh Kumar and Amrita Sarkar, for the Respondent

Final Decision: Dismissed

Judgement

Hari Shankar Prasad, J.

This appeal is directed against the judgment and order of sentence dated 26-7-96 passed by Sri Ram Nath Ram

Mahto, learned First Additional Sessions Judge-cum-Special Judge (CBI), Dhanbad in R.C. Case No. 22/85, whereby the learned First

Additional Sessions Judge held the appellant, namely, Mukhdeo Singh guilty u/s 161, IPC and sentenced him to undergo RI for two years and to

pay a fine of Rs. 500/- and in default of payment of fine to further undergo simple imprisonment for one year. The learned 1st Additional Sessions

Judge further found him guilty u/s 5(2)(d) of the Prevention of Corruption Act and sentenced him to undergo R.I. for two years and to pay a fine of

Rs. 500/-and in default of payment of fine to undergo simple imprisonment for one year and both the sentences were directed to run concurrently.

2. The prosecution case in brief is that Tetar Bhuiyan, an underground loader of Nichitpur Colliery of B.C.C.L. gave in writing on 27-11-85 to

S.P. (CBI), Dhanbad stating therein that appellant was a clerk in Nichitpur Colliery Dispensary and he has demanded a sum of Rs. 200/- from him

for issuing sick fit certificate. Complaint was verified by S.S. Kishore, Inspector, C.B.I. (P.W. 7), who submitted his report and after receiving the

report the trap party was arranged by Shri L.M. Manjhi (P.W. 10), Inspector of CBI, Dhanbad. Services of two witnesses namely K. Madhavan,

Junior Manager C.C.S.O., Dhanbad and Bakshi J.P. Sinha, Inspector, C.M.P.F., Jharia, IInd Circle, Dhanbad were obtained to witness the

transaction. The trap party consisting of the aforesaid two witnesses. CBI officials and Tetar Bhuiyan (P.W. 6), complainant, assembled in CBI

office, Dhanbad on 28-11-85. The complainant and both the witnesses were introduced, the purpose of assemblage was explained and thereafter

practical demonstration of action and reaction of phenolphthalein powder on pieces of plain paper and in solution of sodium carbonate were

shown, the hand wash of witness J.P. Sinha was kept in phial duly sealed and signed by all the members. The two G.C. notes of Rs. 100/-

denomination each were produced by the complainant, which were tainted with phenolphthalein powder and number and denomination of the G.C.

notes were noted down and the tainted G.C. notes were handed over to the complainant with instruction to give the same to Mukhdeo Singh only

on his demand. The witness K. Madhavan was instructed to shadow the complainant from close distance to overhear the conversation in between

the complainant and the accused. Other members of the trap party were also instructed to take their respective place and to remain vigilant,

watchful and to see the transaction. Preliminary memorandum for pre-trap formalities was prepared and signed by all the persons. The trap party

then proceeded for the Colliery along with both the independent witnesses and the complainant.

3. The trap party thereafter proceeded for Nichitpur Colliery Dispensary and there, all the members of the trap party took their respective

positions. Informant went to Mukhdeo Singh and Mukhdeo Singh demanded money from the informant which he passed on to the appellant and

he kept the amount in his upper left chest pocket of his shirt and thereafter, he went out of his office room and went inside the store room and kept

the money there. The tainted money was recovered by the C.B.I. officials. In course of investigation, it was established that the informant was

absent from his duty since 16-9-85 and reported sick in Nichitpur Colliery Dispensary for his treatment on 24-9-85 for left cheek and he remained

sick till 18-10-85 and thereafter, he proceeded for his native village and reported after Dipawali. He went to the hospital for sick report where this

appellant demanded Rs. 200/- from him for issuance of the same on 26-11-85.

4. From the trend of statement recorded u/s 313, Cr.P.C. and from the trend of cross-examination of the witnesses, it appears that the defence has

taken a plea of complete denial of occurrence and defence has further taken a defence that the appellant was not competent to issue sick fit

certificate and the informant insisted and approached for illegal work to regularize his unauthorized absence and when he was not obliged, he has

filed this false case.

5. The learned Court below after considering the evidence, both oral and documentary, adduced by the parties, came to the finding aforesaid and

found the appellant guilty and convicted and sentenced him accordingly.

6. The learned counsel for the appellant, while assailing the judgment, submitted that charges have defectively been framed. The learned counsel

submitted that the demand of bribe was made on 26th and enquiry was made on 27th and from perusal of charge, as it has been framed, it will

appear that charge have been framed for the occurrence dated 28th and it does not show that any such occurrence took place on 26th or 27th

November, 1985.

7. On the other hand, learned counsel for the prosecution submitted that the trial will not be vitiated on technical ground. In this connection, reliance

was placed on 1998 (1) ECC 952 (Pat). From perusal of charge, it appears that charge refers to the date 26th and 27th also along with the date

28th but it does not refer the happenings that took place on 26th and 27th, but it shows that the trap laid on 28th was in consequence of

happenings of 26th and 27th and, therefore, the submission that charges were defectively framed do not stand and this is a mere technicality and

nothing else.

8. Learned counsel appearing for the appellant further submitted that in the raid there must have been two independent witnesses and in the instant

case there is no independent witness and both the witnesses are not independent ones because they are employees/officers of C.M.P.F. and as

such they are not independent witnesses. In this connection, learned counsel submitted that P.W. 4, Bakshi J.P. Sinha is the Assistant

Commissioner in C.M.P.F., Dhanbad and thus he is not an independent witness. He further submitted that similarly K. Madhvan was the Junior

Manager (Accounts) in Steel Authority of India Ltd. and thus he was also an officer and not an independent witness. Learned counsel further

submitted that both the witnesses, as called to be independent, are such witnesses, who under pressure of the C.B.I. can give any type of evidence

and, therefore, they are not independent witnesses and raid becomes doubtful and suffers from legal flaw, as both the witnesses are not

independent ones. Learned counsel further submitted that raid in absence of independent witnesses makes it of no value and in this connection,

reliance has been placed upon, Gurcharan Singh Vs. State of Haryana, wherein it has been held that there must be independent corroboration of

the occurrence. Learned counsel further submitted that to prove the allegation of demand and acceptance of bribe by the appellant, the evidence of

complainant or trap witnesses cannot be safely acted upon in the absence of some independent corroborative evidence and since not a single

witness is an independent one in the trap so there is no independent corroboration of the occurrence and the case must fail.

9. On the other hand, learned counsel for the prosecution submitted that witnesses are independent ones and they are not under the control and

authority of C.B.I. Learned counsel further pointed out that mere acquaintance of witnesses with the police officers would not make a witness non-

independent as every citizen is presumed to be independent till he is proved to be dependant on police for any purpose whatsoever. In the instant

case, as pointed out above, both the witnesses said to be independent ones belong to different departments and they were directed by their

superiors at the instance of C.B.I. to be with the trap party. Nothing has been brought on record by way of cross-examination to show that these

two witnesses namely Bakshi J.P. Sinha (P.W. 4) and K. Madhvan (P.W. 5) are in any way connected with the I.O. or C.B.I. and, therefore, no

doubt, they were independent witnesses. In this connection, learned counsel for the prosecution placed reliance upon State of U.P. Vs. Zakauallah,

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10. From perusal of entire evidence recorded in the case, the defence has not brought any material on record to show that these witnesses namely,

P.W. 4 and P.W. 5 are not independent witnesses. It is true that they are officers in their respective departments but it does not mean that they

were in any way influenced by C.B.I. or I.O. of the case. It has been held in the judgment reported in State of U.P. Vs. Zakauallah, that even a

D.S.P., who arranged the trap had no interest against the respondents but the plan shown by him to bring his trap to a success was held to be of

no ground to think that he had any animosity against the delinquent officer. Here in the instant case, no such plea has been taken or no such

material has been brought on record to show that P.Ws. 4 and 5 were interested persons and that trap laid by I.O. (P.W. 10) was in any way due

to any personal grudge or any animosity against the delinquent officer. Hence the ground taken by the defence does not stand.

11. The learned counsel for the appellant raised another point that appellant was not the appropriate authority for issuing sick fit certificate. He

pointed out that doctor, who has been examined as P.W. 3 has specifically stated that he is the appropriate authority for issuing sick fit certificate

and, therefore, it is wrong to say that appellant was in any way responsible for issuing sick fit certificate. The learned counsel further pointed that

when appellant was not the appropriate authority for issuing sick fit certificate, therefore, it is clear that this appellant, due to any reason

whatsoever, has falsely been implicated in this case. It was further pointed out that informant or complainant had himself committed mistake as he

remained in hospital for some time and thereafter he went home and stayed there for some time and he wanted sick fit certificate for the entire

period of his absence meaning thereby that he wanted sick fit certificate for the period he spent in the hospital and also for the period he

unauthorisedly absented himself from duty and when appellant refused to oblige the complainant, then complainant falsely implicated the appellant.

The learned counsel for the appellant referred to the evidence of P.W. 3 wherein P.W. 3 has stated that he used to issue sick fit certificate and,

therefore, there was no question on the part of the appellant to issue sick fit certificate.

12. On the other hand, it is submitted that employees or labourers used to receive sick fit certificate from the appellant and complainant is not

concerned as to who is the appropriate authority for issuing sick fit certificate but in fact this appellant used to issue sick fit certificate.

13. On a careful scrutiny of the stand taken by the learned counsel for the appellant, it appears to me that on the one hand a plea has been taken

that since the appellant was not issuing certificate both for legal and unauthorized absence of P.W. 6 as stated above, and, therefore, he has been

falsely implicated in this case and on the other hand, a plea has been taken that this appellant was not at all competent to issue sick fit certificate

and it was not his duty to issue sick fit certificate and both the pleas cannot be taken simultaneously because both are conflicting to each other and

it goes to show that appellant was the person for those, who used to get certificate from the hospital regarding their sick leave and that is why

complainant (P.W. 6) approached this appellant for issuing sick fit certificate.

14. Learned counsel for the appellant further pointed out that mere recovery of tainted money from Almirah is not enough for showing that

appellant is guilty of receiving illegal gratification from the complainant. Learned counsel for the appellant placed reliance on Suraj Mal Vs. State

(Delhi Administration), wherein it has been held that mere recovery of money from accused is not sufficient. Learned counsel for the appellant

further submitted that from the evidence of witnesses like P.Ws. 4, 5 and 6 and others. it appears that money was not recovered from the

conscious possession of the appellant. Learned counsel further pointed out that the so-called tainted money was recovered from the Almirah, as

stated by the prosecution witnesses, and recovery in this manner casts doubt about the genuineness of the trap. It was further pointed out that there

were so many persons including complainant and independent witnesses together with I.O. who were involved in the trap but even after alleged

acceptance of money by the appellant he had sufficient time to go to another room and after unlocking the lock of the room and placing the money

in the Almirah and again locking the door of the room he came back to the place of his sitting and this all shows that there was plantation and

nothing else and he has been purposely nabbed in the case. In this connection, reliance has been placed upon M.K. Harshan Vs. State of Kerala, .

In this case, trap witnesses deposed that accused did not touch currency notes but told him to keep same in his drawer and thus tainted money

was recovered from the drawer of the accused. There was no corroboration of this evidence of the trap witnesses and, therefore, accused was

given benefit for doubt.

15. On the other hand, learned counsel for the prosecution has submitted that P.W. 6 (complainant) was instructed to give money on demand by

the appellant and he has deposed that on demand by appellant he gave the tainted money to the appellant and he kept that tainted money in his

pocket. It was also pointed out that appellant grew suspicious from the movement of some persons and he at once went to another room, kept the

money there and came out and occupied his seat and on search of his person when tainted money were not recovered then on query he himself

pointed out that he has kept the money in Almirah and took them to that place and gave the tainted money. Learned counsel further pointed out

that his hands and cloths were dipped in the solution and colour turned pink and this is enough to show that he received the money otherwise, if it

was a case of plantation then his hands and cloths would not have turned pink on being dipped in the solution. The learned counsel further pointed

out that burden of proof was on appellant to show as to how he received that money, he failed to discharge that onus. In this connection, reliance

has been placed upon The State of Assam Vs. Krishna Rao, . He further pointed out that from the evidence like P.W. 4 and P.Ws. 5, 6 and

others, it appears that money was recovered from the conscious possession of the appellant.

16. On perusal of the oral as well as documentary evidences, the facts, which emerge are that complainant (P.W. 6) reported sick and he was

working as underground loader in Nichitpur Colliery and for drawing salary of the sick period he needed sick fit certificate and he approached the

appellant, who was a clerk in Nichitpur Colliery Hospital and who was maintaining that register and he demanded Rs. 200/- for issuing sick fit

certificate but this witness reported the matter to the CBI, who after due verification, lodged an FIR to that effect and with the help of two

independent witnesses P.W. 4 and P.W. 5 and other officials a practical demonstration of procedure for trapping a bribe taker was displayed in

the CBI office and a sum of Rs. 200/- (two notes of hundred each denomination) were tainted with the powder and amount was handed over to

P.W. 6 to be given to appellant and on demand complainant (P.W. 6) handed over the amount to the appellant and he accepted the money but he

nursed some doubt due to presence of P.W. 5 and went to store room and kept the money in steel almirah and again came back to his seat where

he was challenged (sic) saying that he has accepted the bribe for issuing sick fit certificate but the tainted money was not recovered from search of

his person and on query the appellant himself disclosed that he has kept the money in the almirah of the store room, wherefrom money was

recovered and as per practical demonstration his hands and shirt were dipped in a sodium carbonate solution and the colour of the milky white

solution after wash turned into pink colour and, thereafter, other formalities were observed. Thus there is ample evidence against the appellant and

(that) he accepted the money as illegal gratification.

17. From the discussion made above, I do not find any reason to interfere with the finding arrived at by learned First Additional District and

Sessions Judge-cum-Special Judge (CBI), Dhanbad.

18. In the result, this appeal is dismissed.