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Jharkhand High Court

Case No: Criminal Appeal No. 60 of 1996 (R)

Mukhdeo Singh — APPELLANT

Vs

State of Bihar — RESPONDENT

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 27-11-8.5 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 arid 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. Zakaullah, .

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. Zakaullah, 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 he 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.