

(2012) 07 JH CK 0110

Jharkhand High Court

Case No: Criminal Appeal No. 218 of 2007

Sri Madan Mohan Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 31, 2012

Acts Referred:

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

Citation: (2013) 1 AJR 13 : (2012) 3 JCR 566

Hon'ble Judges: Jaya Roy, J

Bench: Single Bench

Advocate: N.N. Sinha and Rajesh Kumar Mahatha, for the Appellant; Md. Mokhtar Khan, for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Mrs. Justice Jaya Roy

1. Jaya Roy, J. The appellant has filed this appeal for setting aside the Judgment of conviction and sentence dated 17.02.2007 passed by the VIIth Additional Judicial Commissioner-cum-Special Judge, C.B.I., Ranchi in R.C. No. 10(A) of 2000(R) whereby the appellant has been convicted for the offence under Sections 7 and 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. He is sentenced to undergo R.I. for three years u/s 7 of the RC. Act and he is further sentenced to pay a fine of Rs. 10,000/-. In case of default, he will further undergo simple imprisonment for two months. The convict is further sentenced to undergo rigorous imprisonment for five years under Sections 13(2) read with 13(1) (d) of the P.C. Act and sentenced to pay a fine of Rs. 30,000/-. In case of default in payment of fine, the convict will further undergo simple imprisonment for six months. All the sentences will run concurrently. The prosecution case in brief is that the complainant Ladle Hassan had applied for loan of Rs. 1,00,000/- under Prime Minister Rojgar Yojana. The application for loan was submitted before District Industrial Centre in the year

1999-2000 and the complainant was selected by the District Industrial Centre and his loan application was forwarded to local branch of Central Bank. It is further alleged that thereafter the complainant had met with Madan Mohan Singh, Branch Manager of Balumath Branch of the Central Bank in connection with his loan application for several times. On 10.9.2000 when the complainant went to the accused Madan Mohan Singh regarding the loan application, he asked him to give Rs. 10,000/- and further told him that when he will give the said amount, then his work will be done. Inspite of the several request of the complainant, the accused did not agree. He asked the complainant to pay him Rs. 10,000/- on 11.9.2000. As the complainant did not want to pay the aforesaid bribe amount to the accused, he submitted a written complaint to the S.P. C.B.I. Ranchi for taking action against the accused. After filing the written complaint, the allegation was verified by Sri B.N. Singh Inspector and after submission of the Verification Report, a regular case u/s 7 of the P.C. Act was registered against the accused appellant. Thereafter a trap team was constituted consisting of Sri A. Prasad, Deputy S.P., Binay Kumar, B.N. Singh both Inspector, H. Bahuguna, S.I., C. Mahto and Mahesh Kumar both constable. The complainant Ladle Hassan was instructed to be present at 12.30 hours with Rs. 10,000/- to be used as bait for catching Madan Mohan Singh accused red handed while demanding and accepting the bribe. Services of two independent witnesses Kalyan Khalkho and Francis Lakra were requisitioned from the Income Tax Department who reported to Sri A. Prasad, Dy. S.P., C.B.I., Ranchi at 12.15 hours. All the trap team members and both the independent witnesses and the complainant Ladle Hassan assembled in the office room of Sri A. Prasad, Dy. S.P., C.B.I. at about 12.30 hours.

2. Thereafter, they were told the purpose for which they have been called and the written complaint of the complainant was shown to them. The purpose and use of phenolphthalein powder and its reaction with solution of sodium Carbonate in plain water have also been explained to them with an elaborate practical demonstration and also directed about their part to play and they were properly briefed. Thereafter, the memorandum of all the Pre-trap Proceedings was prepared and after it was read over and explained to them, all the persons so assembled, put their signature over the said Memorandum. Thereafter, they proceeded for Balumath.

3. The further case of the Prosecution is that after reaching Balumath, at about 7.15 P.M. the complainant Ladle Hassan was asked to contact the accused M.M. Singh, branch Manager, Central Bank of India, Balumath Branch at his residence. The complainant Ladle Hassan (P.W. 5) along with shadow witness Kalayn Khalkho (P.W. 2) went to the residence accused. The C.B.I. trap team members and the other independent witness Francis Lakra took their position in cognito in close vicinity. After exchange of pleasantries the complainant and the shadow witness were asked by accused to come inside the room. Accordingly the complainant and the shadow witness Kalayn Khalkho went inside the room. The accused appellant asked the complainant as to whether the complainant had brought the money to which the

complainant replied in conformity. Thereafter, the accused appellant extended his hand and the complainant handed over the tainted currency notes amounting Rs. 10,000/- to the appellant. The appellant after counting the amount by his both the hands and hold the said amount in his right hand and told the complainant that he will get the loan. The conversation was clearly heard by the Shadow witness Kalyan Khalkho who also saw the transaction of the amount. Thereafter, according to the direction, the complainant gave the signal, the trap team members rushed towards the accused appellant and Sri A, Prasad after disclosing his identity and identity of other team members and witnesses challenged the accused appellant for having demanded and accepted illegal gratification of Rs. 10,000/- from the complainant. On being challenged, the accused appellant got perplexed and his face became pale and admitted his guilt. He was declared arrested. The ground of his arrest was conveyed to the accused appellant. Thereafter, a solution of sodium carbonate was prepared in clean water. On being asked, the appellant washed his left hand fingers in the said solution and the color of the solution turned pink. The accused appellant was asked to hand over the tainted currency notes which he was holding in his right hand to the witness Kalyan Khalkho. Kalyan Khalkho counted the number and denomination which tallied in toto. The aforesaid solution kept in a bottle was sealed and leveled and the recovered tainted currency notes were kept in an envelop which was sealed and signed by all the concerned. The details of all the proceedings was incorporated in the memorandum and the memorandum was read over and explained to all the present. After finding the contents correct all the team members, witnesses and the complainant signed over the memorandum. A copy of the memorandum was also given to the accused appellant under his duly acknowledgment. The seized materials were thereafter forwarded to the C.F.S.L., Ranchi and after obtaining the report and after receiving the sanction for prosecution and after completion of the investigation, the I.O. submitted charge sheet against the appellant under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

4. The appellant denied charges and had pleaded in his defense that he has been falsely implicated by the complainant and claimed to be tried.

5. The prosecution has examined ten witnesses to prove its case amongst them P.W. 1 Sharvan Kumar Gupta, P.W. 2 Kalayn Khalkho, P.W. 3 Francis Larkka, P.W. 4 Anil Kumar Srivastava, P.W. 5 Ladle Hassan, P.W. 6 Arun Kumar Sinha, P.W. 7 Arun Kumar Pathak, P.W. 8 Gautam Shanker Das, P.W. 9 Rameshwar Baski and P.W. 10 Binay Kumar. The defense has examined three witnesses on his behalf.

6. Mr. N.N. Sinha the Learned Counsel for the appellant has submitted that P.W. 6 Arun Kumar Sinha, P.W. 7 Arun Kumar Pathak, P.W. 8 G.S. Das and P.W. 9 R. Bakshi have stated in their evidence about the procedure laid down under Prime Minister Rojgar Yojana (P.M.R.Y) loan programme. They have stated that for grant loan Rs. 100000/- (One lakh) under the aforesaid loan programme, the applicant has to be

educated and unemployed and after verifying the application by the D.I.C. constituted in each District, applicant have to appear before a "Task Force Committee" and if the committee finds the applicant fit in all respect, it will send the application to the local Bank. The duty of the Bank thereafter is to examine the viability of the Industry/ Trade opted by the applicant and then only loan will be allowed. It is also stated by P.W. 7 that usually it takes one month time in completing the formality. It cannot be done by two or three days. P.W. 8 has also stated that the procedure takes at least 15-13 days time for an application to mature for payment. He has further submitted in his evidence that if any application is rejected, the applicant has to file a fresh application. P.W. 7 also stated in case trade is changed by the applicant, the entire formalities have to start from very beginning.

7. Mr. Sinha counsel of the appellant has pointed out that the P.W. 9 Rameshwar Baski has stated that the complainant Ladle Hassan had earlier applied for loan for Sari Printing Industry but that was withdrawn. Thereafter, he applied for the loan for starting Bangle Shop that too was rejected by the Bank because it was not economically viable. Thus, from the evidence of P.Ws. 6, 7, 8 and 9 it appears that the application was not at all maintainable as the last application filed by the complainant has not passed through the procedure as explained by the above named witnesses. Therefore, there is no question of demanding any bribe from the complainant.

8. It is further contended that the complainant (P.W. 5) has stated in his evidence that his earlier two applications for loan had not been accepted by the Bank. In para-22 he has admitted that his application had been rejected but thereafter he had struck off the nature of the Trade on the top of the same application and submitted for the payment of loan. He has also admitted that the said application was not sent to D.I.C. neither it had been processed by the Task Force Committee. He has further admitted that normally time for granting loan takes 2 to 3 months and without recommendation of "Task Force Committee", loan cannot be granted. Therefore, from the evidence all these witnesses including P.W. 5, it shows that the complainant is not at all fit for getting the loan neither his application was properly processed. If the complainant is not entitled for any loan, there is no scope for demanding any bribe for payment of loan.

9. Mr. Sinha has further pointed out that the complainant P.W. 5 has made contradictory statement in his evidence as he has stated that the accused appellant has demanded bribe money on 10.9.2000 in his house but his own admission in the Court during his evidence that the accused appellant had demanded bribe money in the Bank not in the house. Further more, in para-32 of his evidence he has stated that he never went to the house of the accused appellant. Therefore, the story of demand and acceptance of bribe money by the accused appellant is utterly false and the accused appellant is deserved to be acquitted from the charges framed against him.

10. Mr. Sinha has further submitted that the complainant P.W. 5 is not at all a trust worthy witness. He has pointed that the appellant though applied for loan stating that he was educated and unemployed but he admitted in his evidence that the complainant was in service at Surat since 1993. Further more, he has suppressed the fact in his complaint to the C.B.I. that earlier two applications of the complainant for loan had been rejected by the Bank, which he disclosed in his evidence. He did not tell the C.B.I. that the complainant had made forgery in his last application and had changed the nature of the Trade, and inspite of knowing the procedures and time-expected to be taken in it, he wanted the accused appellant to grant loan to him immediately. The complainant asked the accused appellant to grant loan in his favour and when the accused did not agree to grant the loan without verification and proper formalities, the complainant in conspiracy with C.B.I. officials got the accused arrested. The accused never demanded nor he had accepted any bribe money nor any thing had been recovered from his possession. The complainant made false statements that he had met the accused appellant on 10.09.2000 in Bank but it was a Sunday not the working day. He made another false statement that he had gone to the house of the accused appellant on 10.09.2000 as he himself admitted para 32 that he had never visited the house of the accused appellant. In view of these aspect question of demand and payment did not arise.

11. It is further submitted that not a single local or independent witness was called at the time of occurrence, only the tutored witnesses showing them as independent, had been taken by the C.B.I, from Ranchi to Balumath with them and so called independent witnesses after traveling long distance i.e. from Ranchi to Balumath and remained with the C.B.I. Officials cannot be treated as independent witness.

12. Mr. Sinha has further argued that the sanction accorded in this case is bad in law and without jurisdiction as the sanction authority in his order has nowhere mentioned regarding any documents which he had seen and considered. Thus, without considering the facts and circumstances and without application of mind, sanction has been accorded mechanically. To support of his contention he has cited a decision of the Hon"ble Apex Court [V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P.,](#) in which it is held:-

23. It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is therefore, vitiated in law....

13. Mr. Khan the counsel of the C.B.I, has submitted that sanction has been accorded by the competent authority after perusal of all the materials. The sanction order which is Ext-1 clearly shows that the sanctioning authority has very specifically mentioned in the said order that after fully carefully examining the materials sanction was given for the prosecution of the accused appellant. Therefore, there is

no illegality in the sanction order. In this regard Mr. Khan has cited a decision of the Hon'ble Apex Court reported in (2010) 8 Supreme Court Cases- 655 State of Madhya Pradesh- Vrs- Harishankar Bhagwan Prasad Tripathi in which the Hon'ble Apex Court has held:-

16.... "While granting sanction the officer concerned is not required to indicate that he has personally scrutinized the file and had arrived at the satisfaction for granting sanction. The narration of events granting sanction for prosecution clearly indicates the case and the reason for grant of such sanction. In the present case also the order granting sanction does not, in our view, suffer from any infirmity which prompted the courts below to acquit the accused persons.

14. Mr. Khan has contended that regarding independency of witness, the Hon'ble Supreme Court has held in the case of State of U.P. Vrs-Zakaullah reported in (1998) 1 Supreme Court Cases- 557:-

- Every citizen is presumed to be independent until proved to be dependant on police for any purpose whatsoever-Merely because the witness was complainant in another bribery case or that he was a witness in two other cases though not yet examined in those cases would not render him a non-independent witness.

Mr. Khan has submitted that in the present case, the witnesses were taken from the income tax department. They were independent witnesses and neither they were related with the complainant nor they were member of the C.B.I. They can not be said interested witnesses or tutored witness as because they were taken by the C.B.I. Official from Ranchi and they have traveled with the C.B.I. Officer from Ranchi to Balumath. It is also submitted that the counsel of the appellant could not point out any evidence oral or documentary which can prove that they are dependant on the police for their living or liberty or for any other purpose. Therefore, the plea taken by the counsel appearing for the appellant that the witnesses are not the independent witness, is not tenable.

15. Mr. Khan has further argued that the prosecution has fully established all the material facts and prove the case beyond all reasonable doubt against the appellant.

16. Perused the material on records including the oral and documentary evidence adduced by the parties. P.W. 5 namely Ladle Hassan is the complainant and P.W. No. 2 namely Kalayan Khalkho is the shadow witness. I find P.W. 2 has very specifically stated that when he and P.W. 5 entered into the room, the appellant Madan Mohan Singh asked Ladle Hassan whether he has brought Rs. 10,000/-, Ladle Hassan said "Jee Sir" I have brought the amount according to your direction. Thereafter, Madan Mohan Singh told him "Theek Hai, doo" and Madan Mohan Singh extended his right hand to Ladle Hassan who gave then the tainted currency notes to Madan Mohan Singh and he accepted the amount and counted by his both the hands and after holding the said currency notes at his right hand, told the complainant "Theek Hai, Tum Jaao, Tumhara Loan Hoo Jayaga". P.W. 5, the complainant has also stated the

same thing and P.W. 3 Francis Lakra has also supported the aforesaid fact as he was also in the close vicinity of the said place of occurrence. I further find from the records that the witnesses have proved the recovery of the aforesaid tainted currency notes from the appellant Madan Mohan Singh.

17. It is well settled law when the amount is found from the accused, the burden is on the accused to prove that the amount is taken by him not by way of illegal gratification. In the present case, the demand, acceptance and recovery have been proved by the prosecution witnesses and admittedly the appellant has applied for the loan under P.M.R.Y. Scheme to get himself employed.

18. Regarding the statement of D.Ws, they have only proved in nutshell that few persons had came on the date of occurrence and who had taken the appellant with them. They are not the witness of the main occurrence. Only D.W.2 has stated that the servant namely Mohan was present in the house of the appellant whereas D.W. 3 Ramesh Kumar Claiming himself as the servant of the appellant and he has stated in his cross-examination in para no. 4 that he did not used to go in the evening hours in the appellant's house and admittedly the occurrence was key in the evening hours. Thus, the evidence of the defense witnesses is of no help to the appellant. Having carefully considered the submissions made on behalf of key the parties as discussed above and the materials on records including the sanction order Ext-1, in my opinion there is no illegality in the sanction order and the prosecution has able to prove the charges against the present appellant beyond all reasonable doubts. Therefore, I do not find any reason to interfere with the Judgment passed by the Court below. I therefore, dismiss the appeal.