

**(2013) 07 MP CK 0006**  
**Madhya Pradesh High Court**  
**Case No:** Cr. A. No. 508/1999

Tula Shanker alias Tulesh Sitoke

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** July 24, 2013

**Citation:** (2013) ILR (MP) 2958

**Hon'ble Judges:** Vimla Jain, J; Rakesh Saxena, J

**Bench:** Division Bench

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**Judgement**

Vimla Jain, J.

Appellant preferred this appeal u/s 374(2) of the Code of Criminal Procedure being aggrieved by the judgment dated 17/02/1999 passed by Special Judge & First Additional Sessions Judge, Hoshangabad in Special Case No. 36/1992, whereby he had been convicted and sentenced with the direction to run both the sentences concurrently as under:-

Brief facts of the case are that complainant Antar Singh Solanki (P.W. 2) filed an application in Bhumi Vikash Bank for getting loan for well and motor pump. The Bank sanctioned loan of Rs. 17,000/-. He received two installments each of Rs. 3,000/- out of the said loan amount. To release the remaining amount, the appellant/accused demanded Rs. 500/- as illegal gratification from complainant. The complainant filed a written complaint (Ex. P/3) in the office of Special Police Establishment (SPE) Lokayukta, Bhopal on 21/06/1988. The SPE arranged trap and in pursuant to the said trap, the complainant brought Rs. 200/- to pay to the appellant/accused. The phenolphthalein powder was applied and the numbers of currency notes were noted. Panchnama Ex. P/5 of the entire preliminary proceedings was prepared. The trap party reached Timbharni. The complainant and panch Mahesh Kumar met the appellant/accused in a hotel. The appellant refused to accept Rs. 200/- and demanded Rs. 500/-. The complainant arranged the remaining amount of Rs. 300/-. Complainant and members of trap party reached appellant's house. On instruction of police, the complainant and witnesses went in the house.

After some time, appellant came. Thereafter upon signal being received from the complainant, the members of the trap party, immediately reached near the appellant where members of the trap party questioned him whether he accepted Rs. 500/- from complainant Antar Singh (PW-2). The appellant was arrested along with money of Rs. 500/-. The tainted currency notes were recovered from pocket of his pant. Thereafter, Constable Mohd. Rasid prepared water mixture of Sodium Carbonate. In this mixture, both panchas and members of trap party washed their hands, but its colour did not change. When the appellant/accused washed his fingers in the same colourless mixture, it turned pink. The mixture was sealed in bottles. The pocket of appellant's pant, when washed in Sodium Carbonate colourless mixture, turned pink. It was sealed in a bottle. Right hand of complainant was also washed in Sodium Carbonate, it turned pink. It was also sealed in a bottle. The aforesaid sealed bottles were sent to Forensic Science Laboratory, Sagar. After completion of investigation and due sanction from the Deputy Registrar and authorised officer Shri D.P. Dubey, District Co-operative Land Development Bank Limited, Hoshangabad, Challan was filed against the appellant in the competent Court.

2. The appellant pleaded not guilty and complete innocence and claimed to be tried with the prayer that he had been falsely implicated in the case.

3. In order to bring home the charges against the appellant, the prosecution examined seven witnesses. The appellant did not examine any witness in support of his defence. The appellant in his statement, recorded u/s 313 of the Code of Criminal Procedure, 1973, denied his involvement in the commission of the offence. He pleaded that he had received back the loan amount of Rs. 500/- which was payable by father of complainant Antar Singh (PW-2).

4. The learned Court below, after scanning the evidence found the charges proved against the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. Accordingly, it convicted and sentenced him as stated hereinabove.

5. This appeal has been filed by the appellant assailing the said judgment of conviction and order of sentences.

6. Learned counsel appearing for the appellant submitted that the complainant Antar Singh (PW-2) did not support the prosecution case. R.B. Sharma, DSP (PW-7) is a Police Officer. He is an interested witness on behalf of the prosecution. Therefore, his statement can not be relied upon. He further submitted that the prosecution has failed to prove beyond reasonable doubt that the appellant had made any demand and accepted bribe from the complainant as alleged by him and therefore, the presumption u/s 20 of the PC Act, 1988, has wrongly been drawn by the trial Court against the appellant and in favour of the prosecution. The Court below has committed grave error of law in holding the appellant/accused guilty for the offences under the Act. He prayed that the appeal deserves to be allowed by setting

aside the finding of conviction and order of sentence. In the support of his submission, he placed reliance on a decisions of Punjabrao vs. State of Maharashtra, 2002 AIR SCW 16, and [State of Madhya Pradesh Vs. J.B. Singh, .](#)

7. On the other hand, learned counsel for the SPE Lokayukta supported the findings of the Court below and contended that the findings of the Court below were recorded on a proper appreciation of the evidence and did not suffer from any infirmities, to call for interference in this appeal. He further argued that the evidence and the circumstances were sufficient to establish that the accused had accepted the amount and to give rise to a presumption u/s 20 of the Prevention of Corruption Act.

8. We have considered the arguments advanced by learned counsel for the parties and perused the record.

9. The question for decision is whether the prosecution has proved the charges beyond all the reasonable doubts.

10. Complainant Antar Singh Solanki (P.W. 2) stated that he was to receive loan of Rs. 17,000/- from the Bhumi Vikas Bank, Timbarni for well and motor pump. He received two installments and last installment of Rs. 11,000/- was due. He further stated that the accused/appellant asked him to deposit Rs. 500/-, after that remaining amount would be given to him. Appellant did not demand bribe. He did not pay Rs. 500/- as a bribe to appellant. He paid him amount of Rs. 500/- to credit in the account of his (complainant's) father. He also stated that he did not lodge any complaint against the appellant about illegal gratification at Bhopal. In his cross-examination, he deposed that in the application Ex. P/3 he did not mention that

11. The complainant Antar Singh (PW-2) further stated that he filed a complaint at Bhopal and admitted his signature on application Ex. P/3 on part of A to A. He also stated that he had given Rs. 500/- to police at Harda Rest house. In his cross examination he admitted that the phenolphthalein powder was applied on the currency notes which were handed over to him with instruction that he would give the said notes to appellant/accused. On careful scrutiny of the statement of complainant. Antar Singh (PW-2), it appears that he had supported the prosecution to a little extent. But at the same time complainant had not supported the prosecution case on main ingredients of motive, demand and acceptance and turned hostile. In cross-examination also, he had not supported the prosecution version on demand or acceptance of the amount.

12. Shri R.B. Sharma, the then DSP, Lokayukta (PW-7), stated that on 21/06/1988, complainant Antar Singh Solanki filed a written complaint Ex. P/3 and FIR Ex. P/8 was registered. Thereafter, Crime case No. 151/1988 was registered. The complainant Antar Singh brought five notes each of Rs. 20/- and one note of Rs. 100/- amounting to Rs. 200/-. Numbers of the aforesaid notes were noted in the panchnama.

Constable Rajendra Singh applied phenolphthalein powder on the aforesaid notes and kept in right pocket of pant of complainant and advised him that he would not touch the currency notes. Thereafter, trap party went to Timbharni on 22/06/1988. Complainant and panch Mahesh Kumar met the appellant/accused in a hotel wherein the appellant refused to accept Rs. 200/- and demanded Rs. 500/-. Then members of trap party and complainant went to village Khidkiwala and arranged the remaining amount of Rs. 300/- (3 notes of Rs. 100/-). The panchnama Ex. P/5 of these notes was also prepared. Thereafter, complainant and members of trap party went to appellant's house. The complainant with witnesses entered appellant's house. The members of the trap party remained out side of the appellant's house. After some time appellant came. Thereafter, upon signal being received from the complainant, the members of the trap party immediately reached near the appellant where members of trap party questioned him that whether he had accepted Rs. 500/- from complainant and he replied "yes". The appellant was arrested along with money of Rs. 500/- Thereafter, Constable Mohd. Rasid prepared water mixture of Sodium Carbonate. In this mixture, both panchas and members of trap party washed their fingers, but its colour did not change. When the appellant/accused washed his fingers in the same colourless mixture, it turned pink. The aforesaid mixture was sealed in bottles. Seized currency notes numbers and matched its with numbers mentioned in panchnama (Ex. P/5). The pocket of appellant's pant was also washed in Sodium Carbonate and it turned pink. Such mixture was sealed in a bottle. Right hand of complainant was also washed in Sodium Carbonate and it turned pink. It was also sealed in a bottle. The aforesaid sealed bottles were sent to Forensic Science Laboratory, Sagar.

13. The trial Court mainly placed reliance on the evidence of R.B. Sharma, DSP Lokayukta (PW-7) to hold the accused guilty. The evidence of R.B. Sharma, DSP (PW-7), who is a police officer, cannot be discredited in trap case merely because he is a police officer. It appears that there is no reason for Shri R.B. Sharma, DSP (PW-7) to falsely implicate the appellant/accused. The evidence of R.B. Sharma (PW-7), therefore does not suffer from any infirmity. On the other hand, the evidence on record and circumstances of the case clearly show that the illegal gratification was demanded and accepted by the appellant.

14. It is pointed out by the learned counsel for the appellant/accused that in this case, presumption cannot be made u/s 20 of the Act. We reproduce Section 7 and Section 20 of the Act.

7. Public servant taking gratification other than legal remuneration in respect of an official act.- whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or

for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

S. 20, Presumption where public servant accepts gratification other than legal remuneration- (1) where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

15. The evidence is very clear that the currency notes with phenolphthalein powder were seized from the pocket of the accused/appellant's pant. When his pant and his fingers were washed in water mixture of Sodium Carbonate colourless mixture, it turned pink. It is also proved beyond doubt that the numbers of seized currency notes had matched with the numbers noted in panchnama Ex. P/5. Such evidence is corroborated by FIR (Ex. P/8) and statement of R.B. Sharma (PW-7). We do not find anything in the statement of R.B. Sharma, recorded during his cross examination, to suggest that the appellant/accused had been falsely implicated at his instance. In this case; it is proved beyond any doubt that the currency notes were recovered from the possession of the appellant.

16. The Apex Court has held in the decision of State of A.P. vs. Kumaraju Gopala Krishna Murthy (2000) 9 SCC 752, that:-

when an amount is found to have been passed to the public servant, the burden is on public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused.

17. In the case of Punjabrao vs. State of Maharashtra (supra), the Apex Court has held that:-

It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability.

18. Once it is proved that the money was recovered from the possession of the appellant/accused, the burden of presumption as contemplated u/s 20 of the PC Act, 1988, shifts upon the appellant, which he could not rebut through cross examination of the prosecution witnesses or by adducing reliable and convincing evidence to prove that complainant Antar Singh paid the amount of Rs. 500/- to credit in the loan account of his father. The complainant had not given any reason why did he chose to deliver currency notes of Rs. 500/- with phenolphthalein powder to the appellant. The appellant/accused did not produce any evidence oral or documentary that father of complainant took any loan which was repayed to him by the complainant.

19. The currency notes of Rs. 500/- were recovered from the possession of the appellant which were got treated with phenolphthalein powder before R.B. Sharma, DSP, Lokayukta (PW-7). The members of the trap party along with the complainant went to the house of appellant at Village Timbharni where the bribe money was handed over to the appellant by the complainant. It is proved that there was voluntary and conscious acceptance of the money.

20. Thus, the citations submitted by the appellant and the facts of this case being not similar, we are of the opinion that the said judgments are of no assistance to the appellants.

21. Having regard to the entire evidence discussed above and having carefully and closely considered the judgment of the trial Court, the view taken by the trial Court, is found to be reasonable. Therefore, we agree with the impugned judgment of the trial Court.

22. In the result, for the above stated reasons, there is no merit in this appeal.

23. Coming to the question of sentence, it is to be noted that the minimum sentence for offence relatable to Section 7 is six months while that relatable to Section 13(1)(d) is one year. The incident in question had taken place about 24 years ago. Appellant has crossed 60 years of age. Therefore, we think it appropriate to reduce both the sentences to the minimum prescribed under the statute. In other words, both the sentences shall be six months and one year respectively and shall run concurrently. The appeal is dismissed except to the extent of modification of sentences as noted above.