

Dr. Suman Kumar Gupta Vs State of Madhya Pradesh**Criminal Appeal No. 663 of 1997**

Court: Chhattisgarh High Court**Date of Decision:** March 2, 2012**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 161#Prevention of Corruption Act, 1988 â€” Section 13(1)(d), 13(2), 20, 5(1)(d), 5(2)

Citation: (2012) 2 CG.L.R.W. 122**Hon'ble Judges:** Pritinker Diwaker, J**Bench:** Division Bench**Advocate:** Adil Minhaj, for the Appellant; Ashish Shukla, Govt. Advocate, for the Respondent**Final Decision:** Allowed

Judgement

Pritinker Diwaker, J.

The appellant has preferred this appeal against the judgment and order dated 15-3-1997 passed by Special Judge,

Raipur in Special Case No. 30/1992 convicting the accused/appellant under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of

Corruption Act and sentencing him to undergo rigorous imprisonment for one year with fine of Rs. 1000 on each count, plus default stipulations.

Case of the prosecution in brief is that at the relevant time the accused/appellant was working as Assistant Surgeon in Primary Health Centre,

Dharsiwa. On 6-11-1987 complainant Chintaram (PW-9) made an application Ex. P-1 before S.P. (Lokayukta), Raipur stating that accused/appellant had demanded Rs. 500 for giving favourable report of Netram and Lalaram so that he may not be prosecuted. It is mentioned in

the said application that ultimately the appellant agreed to give the favourable report for Rs. 100 and he asked the complainant to come with that

amount on 6-11-1987 itself at his residence. However, the complainant did not want to give the amount demanded by the accused/appellant and

wanted an action to be taken against him. On that day itself, J.L. Sharma (PW-11)-Deputy Superintendent of Police, Special Police Establishment,

Lokayukta, Raipur verified the said complaint and made an endorsement that it appeared to be genuine. Preliminary Panchnama Ex. P-2 was

prepared in the office of J.L. Sharma (PW-11) and thereafter the trap party proceeded to the residence of the appellant at Dharsiwa from Raipur.

It is alleged that complainant Chintaram and Panch witness H.H. Pal (PW-5) entered the house of the appellant and gave Rs. 100 to him as bribe.

After receiving the signal, trap party headed by J.L. Sharma (PW-11) entered the house of the appellant and caught him. It is alleged that one

currency note of Rs. 100 was lying on the floor seizure of which was made vide Ex. P-3 and thereafter post trap Panchnama Ex. P-4 was

prepared. Phenolphthalein test was conducted which was found positive. Thereafter, Dehati Nalisi Ex. P-9 was recorded for the offences under

sections 5(1)(d) and 5(2) of the Prevention of Corruption Act and Section 161 IPC and based on this, FIR Ex. P-12A was registered FSL report

Ex. P-12 was received and sanction to prosecute the appellant was obtained on 18-8-1992 vide Ex. P-7. After investigation, challan was filed by

the police on 3-11-1992 and the Court below framed the charge on 12-1-1993.

2. In support of its case, the prosecution has examined as many as 12 witnesses. Statement of the accused/appellant was also recorded u/s 313 of

the Code of Criminal Procedure in which he denied the allegations made against him and pleaded his innocence and false implication in the case.

This apart, one T.K. Agrawal (DW-1) has also been examined by the defence in support of its case.

3. After hearing the parties, the Court below convicted and sentenced the accused/appellant as mentioned in paragraph No. 1 of this judgment.

4. Counsel for the appellant submits that at the relevant time accused/ appellant was working as Assistant Surgeon, Primary Health Centre,

Dharsiva, District Raipur in the erstwhile State of Madhya Pradesh and was at liberty to have his private practice as he was not drawing the Non

Practicing Allowance. He submits that once the appellant was entitled to have his private practice, he was justified in accepting the fee from the

patient. According to him, in the present case also the complainant and his family members were being regularly treated by the appellant and on the

date of incident also the complainant had given Rs. 100 to the accused/appellant for the medical treatment. He submits that the factum of giving fee

for the medical treatment of the complainant and his family members has been admitted by the complainant Chintaram (PW-9) as well as by Panch

witness H.H. Pal (PW-5). He submits that in the statement recorded u/s 313 of the Code of Criminal Procedure also while answering the question

Nos. 19 and 81 the appellant has stated that he had taken Rs. 100 towards his fee. Defence witness T.K. Agrawal (DW-1) has categorically

stated that the accused/appellant was not drawing Non Practicing Allowance and therefore also he was entitled to do his private practice and a

certificate to this effect Ex. D-2 was issued by him. He submits that in the present case complainant PW-9 has not supported the case of the

prosecution and has been declared hostile. He submits that Panch witnesses D.K. Thakur (PW-3) and H.H. Pal (PW-5) have also not fully

supported the case of the prosecution. In respect of the statement of Bhanuram Verma (PW-10) who had accompanied the complainant, it is

argued that his statement is full of contradictions and omissions who while deposing in the Court has improved his version a lot and considering the

statement of this witness particularly the cross examination, its reliability goes. He submits that demand and voluntary acceptance has not been

proved by the prosecution because none of the witnesses has stated that it is the accused/appellant who demanded money or it was handed over

by the complainant as illegal gratification. He submits that presumption u/s 20 of the Act has been sufficiently rebutted by the prosecution as well as

the defence witnesses by leading evidence as it has been proved by the appellant that the appellant was entitled to have his private practice and

money was given to him as fee. It is argued that for rebutting the presumption only preponderance of probability is sufficient and the accused is not

required to prove beyond reasonable doubt that money was not accepted as illegal gratification. It is further submitted that the moment the

accused/appellant shows the preponderance of probability, burden is shifted on the prosecution for proving its case beyond reasonable doubt the

demand and voluntary acceptance on the part of the accused/appellant and also that the money was given as illegal gratification. In respect of this

argument counsel for the appellant placed his reliance on the decisions of the Apex Court in the matter of C.M. Girish Babu Vs. CBI, Cochin,

High Court of Kerala, in the matter of Trilok Chand Jain Vs. State of Delhi, 1, and in the matter of V.D. Jhangan Vs. State of Uttar Pradesh, it is

further argued by the counsel for the appellant that mere recovery of tainted money from the accused would not prove the case of the prosecution

and the prosecution has to prove its case beyond reasonable doubt that there was demand of illegal gratification and in pursuance of the same

voluntary acceptance of the same was also there on his part. In support of this submission, reliance is placed on the decisions of the Apex Court in

the matter of Banarsi Dass Vs. State of Haryana, , in the matter of Subash Parbat Sonvane Vs. State of Gujarat, in the matter of Shravan Malviya

Vs. State of M.P., and in the matter of Suraj Mal Vs. State (Delhi Administration),

5. On the other hand supporting the judgment impugned it has been submitted by the counsel for the respondent/State that being a public servant

the accused/appellant had no authority to demand money from the patients irrespective of the fact that they were treated in the hospital or at the

residence of the doctor. He submits that in the garb of providing medical treatment, the government doctors illegally take money from the patients

either for treatment or giving favourable medical report sought for by them. He submits that even if the complainant is won over by the

accused/appellant, in view of the statement of Bhanuram Verma (PW-10) and other witnesses of trap party including the investigating officer,

conviction is in accordance with law. It is submitted that phenolphthalein test and the FSL report are positive and therefore also the conviction of

the appellant is in accordance with law.

6. Complainant-Chintaram (PW-9) has stated in his evidence that he knew the accused/appellant who at the relevant time was working as a

doctor. On the date of incident in the evening when he returned home, he saw his brother Netram and Lalaram abusing his wife and when he tried

to intervene in the matter, they subjected him to beating as a result of which he suffered injuries and then lodged the report. For the injuries and

pain he went to the accused/ appellant for taking medicines who medically examined him but never demanded any bribe as alleged. He has stated

that it is Bhanuram (PW-10) who took him to the office of S.P. Lokayukta and after making an application Ex. P-1 obtained his signatures

thereon. On that application being shown to the complainant (PW-9) he admitted his signature on the same. After declaring this witness hostile he

was cross-examined by the public prosecutor at length but he has denied the fact that initially the accused/appellant had asked for Rs. 500 and

ultimately the deal was settled at Rs. 100. He has also denied the fact that he had gone to the Lokayukta office along with Bhanuram (PW-10) and

got the accused/appellant trapped giving bribe. In paragraphs 5 and 7 of his deposition he has stated that he had given Rs. 100 to the

accused/appellant as fee for taking treatment. The statement of the complainant has been duly supported by Panch witness H.H. Pal (PW-5). H.H.

Pal (PW-5) has stated that on the date of incident he was called by the people of Lokayukta office where the complainant was also present. After

completing the formalities, he along with the trap party proceeded to the house of the accused/appellant where complainant told him that he had

brought money for his treatment and handed over the said amount as his fee. After handing over money, the accused/appellant and the complainant

came out of the house and when the trap party came there the accused/appellant dropped the said currency note on the ground. Dhanendra

Kumar Thakur (PW-3)-the other Panch witness has stated that on the date of incident he and H.H. Pal (PW-5) were called in the office of

Lokayukta and that he accompanied the trap party to the house of the accused/appellant. When the trap party entered the house of the

accused/appellant, currency note of Rs. 100 was lying on the floor. In paragraph 6 of his deposition this witness has stated that when he too

entered the house of the accused/appellant the members of the trap party were catching hold of his both the hands and the accused/appellant had

told them that said amount of Rs. 100 was towards his fee for the treatment of the family members of the complainant given earlier. Ramvaram

(PW-1) is the witness who had taken Netram and Lalaram for medical examination has not stated anything against the accused/appellant. Retram

(PW-2) is the peon in the office of Special Police Establishment, Raipur who had applied phenolphthalein powder on the currency note of Rs. 100.

Jethuram (PW-4) is the Patwari who had prepared spot map Ex. P-5. M.C. Sharma (PW-6)-one of the members of the trap party has stated in

his evidence that at the relevant time he was working as Inspector in the office of Lokayukta and after reaching near the house of the

accused/appellant they remained about 200 yards away therefrom and first the complainant and Panch witness H.H. Pal (PW-5) were sent to the

house of the accused/appellant and about half an hour thereafter complainant came out and signaled to the trap party. Thereafter, he and the

members of the trap party also went to the house of the accused/appellant, caught hold of him and gave their introduction. At that time a currency

note of Rs. 100 was lying on the ground. After being dipped in the sodium carbonate solution, the colour of the solution turned pink. John

Vergheese (PW-7)-one of the members of the trap party has stated in his evidence that when the trap party reached the house of the

accused/appellant, currency note of Rs. 100 was lying on the ground. D.R. Yadav (PW-8)-Dealing Assistant in the Law Department is the witness

to sanction Ex. P-7 to prosecute the accused/appellant. Bhanuram Verma (PW-10)- a shadow witness who had accompanied the complainant to

the house of the accused/appellant has stated that on the date of incident there was some dispute between Netram and Chintaram. Netram is said

to be under intoxication and during scuffle he suffered some injuries and then the report was lodged and for medical treatment he was taken to the

hospital where the appellant had treated him. He has stated that it was told by the accused/appellant after medical examination of Netram that

injury suffered by him was serious. Thereafter, the complainant requested the appellant to save him by giving a favourable report for which he had

demand Rs. 500 which after a request of the complainant was reduced to Rs. 200 and ultimately it came down to Rs. 100. He has stated that

after coming out of the house of the appellant he discussed the matter with his colleagues that even if Rs. 100 were given to the accused /appellant,

it is not necessary that he would give the report in favour of the complainant and therefore it was decided to make a complaint in the office of

Lokayukta and accordingly he accompanied by other persons went there for the said purpose where after completing the formalities trap party

was constituted, trap was laid and Rs. 100 were given to the complainant. From the cross examination of this witness, it is revealed that statement

of this witness is full of material contradictions and improvements. In case diary statement Ex. D-1 and the one given before the Court he has given

altogether two different stories. Overall statement of this witness creates a doubt in the mind of this Court about the reliability of the same and it will

not be safe for this Court to place implicit reliance thereon. J.L. Sharma (PW-11) is the investigating officer who has supported the case of the

prosecution. Defence witness T.K. Agrawal has stated in his evidence that at the relevant time he was working as District Health Officer and he

knew the appellant who at that time was working as Assistant Surgeon, PHC, Dharsiwa. He has stated that accused/appellant was not drawing

Non Practicing Allowance and therefore was entitled to have his private practice. He has proved document of Ex. D-2 the certificate showing that

the accused/appellant was not drawing Non Practicing Allowance at the time of trap.

7. Having thus gone through the entire evidence available on record what emerges is that on the date of trap the accused/appellant had accepted

Rs. 100 from the complainant which according to the prosecution was a bribe. However, according to the accused/appellant it was towards his fee

for earlier giving treatment to the complainant and his family members. Complainant himself in his statement has categorically deposed that the

amount was given to the accused/appellant towards his fee and that he had never given any bribe to him. Document of Ex. D-2 and the statements

of Dr. T.K. Agrawal (DW-1) and the statement of the accused/appellant recorded u/s 313 of the Code of Criminal Procedure make it clear that

he was not drawing Non Practicing Allowance and therefore was entitled to have his private practice. There is no contrary evidence on record to

show that the appellant was getting the Non Practicing Allowance.

8. Having thus seen the evidence of the witnesses including the complainant who has been declared hostile it becomes apparent that the

prosecution has not been able to prove the demand and voluntary acceptance of illegal gratification made by the accused / appellant beyond

reasonable doubt. Even the complainant (PW-9) has stated in his evidence that the accused/appellant never demanded any illegal gratification from

him and the amount of Rs. 100 given to him was towards his fee for giving medical treatment to him and his family members on an earlier occasion.

T.K. Agrawal (DW-1) has deposed that as the appellant was not drawing the Non Practicing Allowance and therefore he was entitled to have his

private practice. He has proved document of Ex. D-2 the certificate showing that the accused/appellant was not drawing the Non Practicing

Allowance. It has been held by the Apex Court in the matter of Banarsi Das v. State of Haryana (supra) that in the absence of cogent and reliable

evidence to prove demand and voluntary acceptance of illegal gratification and also if the contradictions are in plenty in the statements of the

witnesses, conviction of the accused merely on the basis of recovery and other perfunctory and prevaricating type of evidence, cannot be effected.

It has also been held by the Apex Court in the matter of Subhash Parbat Sonwane v. State of Gujarat (supra) that mere acceptance of money

without there being any evidence that it was with regard to illegal gratification would entail conviction of the accused/appellant. The fact that the

amount of Rs. 100 given to the accused/appellant by the complainant was towards the fee of the accused/appellant, has been corroborated by

H.H. Pal (PW-5). While dealing with an identical issue, it has been held by the Apex Court in the matter of Kanwarjit Singh Kakkar Vs. State of

Punjab and Another, ., that any amount charged by a public servant towards his professional remuneration while doing private practice does not

amount to illegal gratification. In this case, it would not be out of place to reiterate that the accused/appellant was not drawing any Non Practicing

Allowance and therefore was entitled to have his private practice. Thus the defence taken by the appellant in this case that having not drawn the

Non Practicing Allowance he was entitled to have his private practice and that the amount of Rs. 100 given by the complainant to him was towards

his fee for giving medical treatment to the family members of the complainant at the earlier point of time, appears to be a probable one. In view of

above factual and legal position, this Court is of the considered opinion that the Court below has not been justified in basing its conclusion

convicting and sentencing the accused/appellant as mentioned above, on mis-appreciation of the evidence available on record and that being so the

judgment impugned is liable to be set aside. Accordingly, the appeal is allowed. Judgment impugned is set aside. Accused/appellant is acquitted of

the charge levelled against him. He is already on bail and therefore his bail bonds stand discharged. Fine amount if deposited by the appellant be

refunded to him.