

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 870 OF 2012

Mukut Bihari & Anr.

...Appellants

Versus

State of Rajasthan

...Respondent

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 12.10.2011 passed by the High Court of Judicature at Rajasthan (Jaipur Bench) in S.B. Criminal Appeal No.726 of 2001, by which it has affirmed the judgment and order of the trial Court dated 7.9.2001 passed by the Special Judge (ACD Cases), Jaipur in Regular Special Criminal Case No.26 of 1995 (State of Rajasthan v. Mukut Bihari etc.) whereby the appellant Mukut Bihari stood convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988

(hereinafter called the “Act 1988”) and under Section 120B of Indian Penal Code, 1860 (hereinafter called ‘IPC’) and has been awarded the punishment of rigorous imprisonment for a period of 2 years for each count; whereas appellant Kalyan Mal has been convicted for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Act 1988 and under Section 120B IPC and he has also been awarded the punishment of rigorous imprisonment for a period of 2 years on each count.

2. Facts and circumstances giving rise to this case are that:

A. Rafiq (PW.1) filed a complaint on 16.11.1994 before the Anti-Corruption Department (hereinafter called “ACD”), Tonk that his father Deen Mohd. (PW.8) underwent the treatment in Sahadat Hospital, Tonk for urinary infection from 24.10.1994 to 12.11.1994. He stood discharged on 12.11.1994, however he was not issued the discharge ticket and for which Mukut Bihari-accused demanded Rs.100/- as bribe for issuance of the same. The said demand was made on 14.11.1994 when the complainant (PW.1) offered Rs.75/- and 2 Kilogram of Ladoo.

B. In view of the aforesaid complaint, a trap was arranged and as per plan, the complainant met Mukut Bihari, appellant in the staff room of the surgical ward of the hospital and had conversation with

him. Both of them went to the store room wherein the complainant handed over Rs.100/- to Kalyan Mal, appellant at the instance of Mukut Bihari, appellant. The trap party arrested both the appellants immediately and the case was registered against them. After completing the investigation, charge sheet was filed against both of them. During the course of trial, a large number of witnesses were examined and on conclusion of the trial, the court found them guilty and imposed the punishment as referred to hereinabove vide judgment and order dated 7.9.2001.

C. Aggrieved, the appellants preferred Criminal Appeal No.726 of 2001 before the Rajasthan High Court which has been dismissed vide impugned judgment and order dated 12.10.2011.

Hence, this appeal.

3. Ms. Shobha, learned counsel appearing for the appellants, has submitted that for constituting an offence under the Act 1988, the prosecution has to prove the demand of illegal gratification. Recovery of tainted money or mere acceptance thereof is not enough to fasten the criminal liability as the money could be offered voluntarily and the accused may furnish a satisfactory explanation for receipt of the money. The trap case should be supported by an independent eye-witness. The deposition of an interested witness

requires corroboration. The conversation between the accused and the complainant at the time of demand and accepting the money must be heard/recorded by the Panch witness. If two views are possible, then the one in favour of the accused should prevail. In the instant case then the prosecution failed to prove the foundational fact beyond reasonable doubt. Therefore, the appeal deserves to be allowed.

4. On the contrary, Shri Kunal Verma, learned counsel for the State of Rajasthan, has vehemently opposed the appeal contending that acceptance of tainted money is an ample proof for conviction of the offences punishable under the Act 1988. It is not necessary in the trap cases that there must be a shadow witness and conversation between the complainant and the accused should be recorded or heard by the independent witness. In absence of the shadow witness, for any reason, accused cannot insist that demand and acceptance is required by the statute to be proved by corroboration. In the instant case, the appellant no.2 has accepted the money at the instance and in the presence of appellant no.1. There is no reason to disbelieve the testimony of the complainant nor the recovery of the tainted money can be doubted. Thus, the appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. There are concurrent finding of facts that appellant Mukut Bihari asked for bribe as stated by Rafiq (PW.1). It is duly supported by Keshar Singh, S.H.O. (PW.10), the leader of the trap party as he deposed that persons sitting there asked for money. The acceptance had duly been corroborated by R.C. Pareek (PW.3), who deposed that the money was lying on the table. Zaheer Ahmed, Constable (PW.7) stated that he saw Kalyan Mal counting the money. The trap stood proved by the depositions of Rafiq (PW.1), R.C. Pareek (PW.3), Mohd. Rasheed (PW.6), Zaheer Ahmed (PW.7) and Keshar Singh (PW.10). All the witnesses narrated fully how the trap was conducted from the very beginning till the seizure of the tainted money including the making of seizure memos etc. Dr. Bavel (PW.5) admitted the practice of donations by patients. Mr. R.C. Pareek (PW.3) and Mohd. Rasheed (PW.6) have been independent witnesses.

7. The courts below considered the facts properly and appreciated the evidence in correct perspective and then reached the conclusion that the charges stood fully proved against the appellants. The explanation furnished by the appellants that they had falsely

been enroped due to enmity could not be proved for the reason that no evidence could be brought on record indicating any previous enmity between the complainant and the appellants nor any evidence was available to show that the complainant was not satisfied with the treatment given to his father and he could act with some oblique motive in order to falsely implicate the appellants. Thus, under the garb of donation, he had offered the tainted money to the appellants and got them arrested.

8. The law on the issue is well settled that demand of illegal gratification is *sine qua non* for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7

of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.

(Vide: **Ram Prakash Arora v. The State of Punjab** AIR 1973 SC 498; **Panalal Damodar Rathi v. State of Maharashtra** AIR 1979 SC 1191; **Suraj Mal v. The State (Delhi Admn.)** AIR 1979 SC 1408; **Smt. Meena Balwant Hemke v. State of Maharashtra** AIR 2000 SC 3377; **T. Subramanian v. The State of T.N.**, AIR 2006 SC 836; **A. Subair v. State of Kerela** (2009) 6 SCC 587; **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede** (2009) 15 SCC 200; **C.M. Girish Babu v. CBI, Cochin, High Court of Kerala**, AIR 2009 SC 2022; and **State of Kerala and Anr. v. C.P. Rao** (2011) 6 SCC 450)

9. The case of the appellants has no merit as the case is squarely covered by the judgment of this Court in **C.M. Sharma v. State of A.P. TH. I.P.**, AIR 2011 SC 608, wherein a similar issue had been raised that the complainant alongwith the shadow witness went to the office of the accused but the accused asked the shadow witness to go out of the chamber. Shadow witness left the chamber. However, the complainant brought the shadow witness in the chamber and explained to the accused that he was his financier. Despite that the accused again asked the shadow witness to leave the chamber and thus, he went out. The accused demanded the money and the complainant paid over the tainted money to him, which he received from his right hand and kept in right side pocket of the trouser. A signal was given, whereupon he was trapped by the team which apprehended the accused and conducted sodium carbonate test on the fingers of the right hand and right trouser pocket of the accused, which turned pink. The tainted notes were lying on the floor of the office, which were recorded.

10. This Court, after considering various judgments of this Court including **Panalal Damodar Rathi** (supra) and **Smt. Meena Balwant Hemke** (supra) held that acceptance of the submission of the accused that the complainant's version required corroboration in

all circumstances, in abstract would encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of the prosecution. Law cannot countenance such situation. Thus, it is not necessary that the evidence of a reliable witness is necessary to be corroborated by another witness, as such evidence stands corroborated from the other material on record. The court further distinguished the case of **Panalal Damodar Rathi** (supra) on the ground that in that case the Panch witness had not supported the prosecution case and therefore, the benefit of doubt was given to the accused. In **Smt. Meena Balwant Hemke** (supra) as the evidence was contradictory, the corroboration was found necessary.

11. Undoubtedly, in **Smt. Meena Balwant Hemke** (supra), this Court held that law always favours the presence and importance of a shadow witness in the trap party not only to facilitate such witness to see but also overhear what happens and how it happens.

12. This Court in **Chief Commercial Manager, South Central Railway, Secunderabad & Ors. v. G. Ratnam & Ors.**, AIR 2007 SC 2976, considered the issue as to whether non-observance of the instructions laid down in para nos. 704-705 of the Railway Vigilance Manual would vitiate the departmental proceedings. The said manual

provided for a particular procedure in respect of desirability/necessity of the shadow witness in a case of trap. This Court held that these were merely executive instructions and guidelines and did not have statutory force, therefore, non-observance thereof would not vitiate the proceedings. Executive instructions/orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

13. In **Moni Shankar v. Union of India & Anr.**, (2008) 3 SCC 484, this Court held that instructions contained in Railway Vigilance Manual should not be given a complete go-bye as they provide for the safeguards to avoid false implication of a railway employee.

14. So far as the instant case is concerned, the appellants had been working under the health department of the State of Rajasthan. No provision analogous to the paragraphs contained in Railway Vigilance Manual, applicable in the health department of the State of Rajasthan at the relevant time had been brought to the notice of the courts below, nor had been produced before us.

Therefore, it can be held that it is always desirable to have a shadow witness in the trap party but mere absence of such a witness would not vitiate the whole trap proceedings.

15. In the instant case, there is no contradiction in the deposition of the witnesses. The witnesses have truthfully deposed that they did not hear the conversation between the accused and the complainant. Therefore, their version is without any embellishment and improvement. There could be no reason/motive for Rafiq (PW.1) to falsely enrope the appellants in the case.

The appeal is devoid of any merit and is, accordingly, dismissed.

However, considering the fact that the incident occurred about two decades ago and the appellants suffer from severe ailments, they have lost their service long ago and suffered the agony of protracted litigation, the appellant no.1 has been suffering from acute pancreatitis and both the appellants have served the sentence for more than six months, in the facts and circumstances of the case, their sentence is reduced to one year.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

New Delhi,
May 25, 2012