

CASE NO.:
Appeal (crl.) 261 of 2004

PETITIONER:
State of Madhya Pradesh

RESPONDENT:
Shambhu Dayal Nagar

DATE OF JUDGMENT: 02/11/2006

BENCH:
S.B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

DALVEER BHANDARI, J.

This appeal has been filed by the State of Madhya Pradesh against the judgment of the High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior, dated 30.1.2003 passed in Criminal Appeal No.2 of 1999.

The brief facts of this appeal, which are necessary to dispose of this appeal, in a nutshell, are as follows.

The respondent Shambhu Dayal Nagar, who was posted at the Police Station, Malanpur on the post of Assistant Sub-Inspector was convicted under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

According to the version of the prosecution, on 9.8.1996 complainant Badan Singh's sister-in-law (Bhabhi) Bithola Devi, a resident of village Tukera was beaten by Jagmohan, Mahavir etc. who belonged to the same village. A report of the said incident was made by Bithola Devi at the Police Station Malanpur. The investigation of this matter was entrusted to the respondent Shambhu Dayal, Assistant Sub-Inspector. Consequently, he went to the village Tukera at the house of complainant Badan Singh and told him that the opposite party i.e. Mahavir etc. had filed a report against them and in that connection, the rifle of the complainant and Mouser Rifle of Ram Prakash, brother of the complainant would be seized and both, the complainant and his brother would also be arrested. The respondent asked the complainant, Badan Singh, that in case Rs.5000/- was paid to him, he would neither seize the rifles nor arrest them and rather the opposite party's persons will be arrested and sent to jail immediately.

On 21.8.1996, Badan Singh, the complainant told the respondent Shambhu Dayal that he would not be able to arrange Rs.5000/- and he requested the respondent to settle the amount at Rs.3500/-. The respondent agreed to accept Rs.3500/- (bribe money) on the condition that the said amount had to be arranged by the same evening. The complainant was not ready to

give the bribe to the respondent and wanted to get the respondent nabbed. Therefore, on 21.8.1996, he went to the office of Shri Pradeep Runwal, Superintendent of Police, Office of the Public Commissioner, Gwalior with cash of Rs.3500/- and submitted a written application (Ex.P1) on the above-mentioned subject.

The Superintendent of Police directed his subordinates to lay a trap for nabbing the respondent while accepting the bribe. For this purpose, Aditya Chobey, the then Manager, Industrial Development Centre, Gwalior was called with a vehicle. On 21.8.1996, after the arrival of the above-named panch witness Aditya Chobey, PW6 and another Panch witness Srikrishan Chauhan, PW3 at the Special Police Station (Office of the Public Commissioner, Gwalior), the formal application made by the complainant, Badan Singh, was given to Aditya Chobey. The application was read over to Badan Singh. On the said application, Aditya Chobey gave his remarks and confirmed the contents and submission of the application by the complainant and appended his signatures. Thereafter, the complainant gave 35 currency notes of the denomination of Rs.100/- for giving them as a bribe to the respondent. The numbers of all these currency notes were recorded. Inspector Surender Rai Sharma, PW11, of the abovementioned establishment got a thin layer of phenolphthalein powder smeared on both sides of these notes by Ram Roop Singh Ojha, Sub-Inspector. The head constable searched Badan Singh, PW1 and Surender Rai Sharma, PW11 and nothing was left in his pocket. The currency notes, smeared with phenolphthalein powder, were kept in the right side pocket of the pant worn by Badan Singh and it was explained to him not to touch these notes before giving to the respondent. Badan Singh was given instructions not to shake hands with the respondent before and after giving those currency notes to him. The complainant after reaching Vijay Mishthan Bhandar asked Srikrishan Chauhan PW3 to proceed and request the respondent to come at the appointed place i.e. at Vijay Mishthan Bhandar. The respondent immediately came to the appointed place. As already agreed, the complainant had given Rs.3500/- to the respondent and the same were accepted by the respondent. Srikrishan Chauhan PW3, panch witness, was directed to accompany the complainant to witness the proceedings of raid and hear the conversation between the complainant and the respondent. Thereafter, at the abovementioned office, the solution of sodium carbonate was prepared in a clean glass through constable Aparval Singh, which was colourless and the fingers of both hands of Sub-Inspector Ram Roop Singh were washed in the said solution. Thereafter, the colour of the solution became pink. It was packed in a clean small bottle as per rules and sealed and after marking the bottle, signatures of the panchas were taken on it. It was also explained to the complainant and the witnesses that on receiving the currency notes smeared with phenolphthalein powder, this powder would be on the hands of the respondent and after washing his hands in the colourless solution of sodium carbonate, the same would change into a pink coloured solution as mentioned above.

In the said office, packets of two samples each of the phenolphthalein and sodium carbonates were prepared and these were kept in separate envelopes and the same were marked and sealed. Besides Surender Rai Sharma, Aditya Chobey, Manager, AKVN, Gwalior, DSP, I.B. Srivastava, Dy. Superintendent of Police and Amar Singh Bhadoriya, Kashi Ram Mijohnia, Inspector, Head Constable Bhagwati Prasad Sharma, Veer Singh and constables Aparval Singh and Srikrishan Chauhan were a part of the trapping team. Ram Roop Ojha, who had smeared the powder on the currency notes, was not included in the trap team. All the members of the trap team were made to wash their hands with clean water at the office and the colour of solution did not change when their hands were washed with sodium carbonate.

The preliminary panchnama (Ex.P2) dated 21.8.1996 was prepared by the Inspector Surender Rai Sharma (PW11) in respect of all the abovementioned proceedings at the office of the Public Commissioner, Gwalior and it was signed by both the panch witnesses Aditya Chobey and Sri Krishan Chauhan and the complainant.

After the above proceedings, the trap team left for Malanpur in the official vehicle. After reaching Vijay Mishthan Bhandar near Malanpur Police Station, the complainant Badan Singh and panch witness Sri Krishan Chauhan were sent in the said shop. Aditya Chobey, PW6 and other officers and officials of the trap team, concealing their presence, took positions near the said shop. Narender Singh Chauhan, nephew of the complainant, was sent to the police station to call the respondent to Vijay Mishthan Bhandar. At about 7 p.m., the respondent came to Vijay Mishthan Bhandar in his uniform on a motor cycle and spoke to the complainant while sitting inside Vijay Mishthan Bhandar and when the respondent demanded the amount of bribe, the complainant gave Rs.3500/- after taking out the same from his pocket and the respondent kept the same in the right pocket of his uniform's shirt. On passing the pre-decided signal by the complainant, Badan Singh, the constable Aparval Singh and Bhagwati Prasad, who were hiding there, entered Vijay Mishthan Bhandar and caught the respondent by his right and left hands respectively. The other members of the trap team and panch witness Aditya Chobey also entered the said Mishthan Bhandar within minutes and gave their introduction to the respondent.

The fingers of the respondent were washed in the solution of sodium carbonate at the spot, in the presence of the panch witnesses, and the colour of solution became pink. The solution was kept in a small bottle as a sample for its chemical examination and this bottle was sealed as per rules. Thereafter, the fingers of panch witness Aditya Chobey were washed separately in the solution of sodium carbonate, in a clean glass, but its colour did not change. This solution was also packed in a clean small bottle and sealed as per rules. The panch witness Aditya Chobey took out the amount of bribe from

the right side pocket of the shirt of uniform worn by the respondent and their numbers were checked and found to match with the numbers mentioned in the preliminary panchnama. These notes were seized and its seizure memo (Ex.P5) was prepared at the spot by the Inspector Surender Rai Sharma. Thereafter, the shirt of the uniform, which the respondent was wearing at that time, was removed from his body and its right side pocket was washed in the solution of sodium carbonate, after which the solution became pink. This solution was packed in a small bottle for examination and it was sealed as per rules. The above-mentioned shirt of the respondent was seized vide seizure memo (Ex.P4) by Surender Rai Sharma and the notes recovered from the pocket of the respondent were kept in an envelope through the panch witness Aditya Chobey and the envelope was also sealed as per rules. Thereafter, the fingers of Aditya Chobey were made to be washed in the solution of sodium carbonate and the colour of solution changed. This solution was packed in a small bottle and sealed as per rules. Signatures of the panch witnesses, complainant and the respondent were taken on these bottles and the signatures of panch witnesses and the respondent were taken on the envelope containing currency notes of bribe, seizure memos of the shirt and notes. The panchnama (Ex.P3) was prepared at the spot by the Inspector Surender Rai Sharma in respect of all the above-mentioned proceedings. This panchnama was signed by the panch witnesses and the complainant.

On 21.8.1996, The Investigating Officer, Surender Rai Sharma, prepared the sketch map (Ex.P6) of the place of occurrence i.e. Vijay Mishthan Bhandar at Malanpur. On the same date, the Rajdoot Motor Cycle No.MP 06 9315 of the respondent was seized vide seizure memo (Ex.P7).

On 27.9.1996, carbon copy of the written report given to the respondent by Maniram and Mahavir bearing acknowledgement of receipt by the respondent was seized vide seizure memo (Ex.P10) on its production by Jagmohan. The FIR (Ex.P23) was lodged by Surender Rai Sharma at Gwalior, which was later sent to the Police Station Bhopal for the registration of the case, where a Case No.69/96 was registered on 23.8.1996 vide report Ex.P24. The small bottles related to the proceedings of the said case and other seized items were sent to Forensic Science Laboratory, Sagar for their examination. The written permission (Ex.P16) duly signed by Shri N.K. Barya, Additional Secretary of Legal Department of the State of Madhya Pradesh regarding prosecution of the respondent was received on 16.1.1997 and after the formal investigation, the charge-sheet was filed before this Court on 7.2.1997.

Charges under Sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act, 1988 [in the alternate, under section 5(1)(d) read with section 5(2) of the P.C. Act, 1947] were framed against the respondent. The respondent did not plead guilty to the charges and stated in his defence that he has been falsely implicated in this case.

In support of its case, the prosecution examined twelve witnesses PW1 Badan Singh, the complainant, PW2 Bhagwati Prasad Sharma, PW3 Sri Krishan, PW4 Jagmohan, PW5 Ram Roop Singh, Sub Inspector, PW6 Aditya Chobey, Manager, District Industrial Development Centre, Gwalior, PW7 Vijay Kumar Mudgal, Inspector, PW8 K.N. Sharma, PW9 R.K. Gupta, PW10 Dalel Singh, PW11 Surender Rai Sharma and PW12 Shiv Pratap Singh, Inspector.

In his statement, the complainant, Badan Singh, PW1 stated that the respondent had told him that there was a complaint against him and consequently his rifle and the rifle of his brother have to be seized. The respondent told him that if he was paid Rs.5000/-, he would neither seize the guns nor would he arrest them. Badan Singh, PW1 stated that he touched the feet of the respondent and mentioned to him that they are ready to pay Rs.3500/-. There was a settlement at a figure of Rs.3500/- on the condition that this amount had to be delivered to the respondent at the Vijay Mishthan Bhandar on the same evening. Badan Singh, PW1 stated that he had decided to get the respondent apprehended and consequently went to the Superintendent of Police for that purpose.

The complainant, Badan Singh, PW1 gave Rs.3500/- in the office of Superintendent of Police. One police officer applied powder on the currency notes and Badan Singh, PW1 was asked not to touch the currency notes. A trap was organized to nab the respondent. The respondent came to Vijay Mishthan Bhandar on motorcycle in the evening as decided on the appointed place to collect his bribe money of Rs.3500/-. PW1 gave Rs.3500/- to the respondent which he kept in the right hand pocket of his shirt and immediately thereafter on the complainant's moving his head, the respondent was caught by the members of the trap party while accepting the bribe money. The vigilance people got a solution of one powder prepared. Aditya Chaubey, PW6 took out money from the right pocket of the respondent. Thereafter, Aditya Chaubey had washed his hands in the solution. The colour of the water turned pink. Thereafter, that water was sealed in a bottle and the signature of PW1 was obtained. The currency notes were sealed in an envelope and PW1 had appended his signature on them. The motorcycle of the respondent was also seized. PW1 withstood the cross examination and remained unshaken. Aditya Chaubey, who was posted at the Industrial Development Centre, Gwalior also fully supported the case of the prosecution. He also withstood the lengthy cross-examination.

Surender Rai Sharma, PW11 who was posted in the office of the Special Police Establishment also fully supported the case of the prosecution.

Bhagwati Prasad Sharma, PW2 also supported the prosecution version. Srikrishna, PW3, of course, did not support the prosecution version. Jagmohan, PW4 also supported the prosecution version. Other formal witnesses also supported the basic case of the prosecution. The Special Judge also considered the entire evidence, documents and a number of judgments of this Court and the High Courts and came to a definite

conclusion that the prosecution has succeeded in establishing its case and found the respondent guilty of offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced the respondent with punishment of one year rigorous imprisonment and a fine of Rs.500 under Section 13(1)(d) read with Section 13(2) of the said Act. Under Section 7 of the Prevention of Corruption Act also the respondent was sentenced to one year rigorous imprisonment. The Court directed both the sentences to run concurrently and in case of non-payment of fine, the respondent was directed to further undergo imprisonment of two months.

The respondent aggrieved by the said judgment of the Special Judge preferred an appeal before the High Court of Judicature at Madhya Pradesh, Jabalpur at Gwalior Bench.

The High Court again re-evaluated the evidence and set-aside the judgment of the Special Court on the following grounds:

- (1) That the Special Court wrongly placed reliance on the testimony of Badan Singh, PW1. The High Court discarded his testimony on the ground that the upper right pocket of the shirt is not the normal place for keeping the currency notes;
- (2) The High Court discarded the prosecution version because according to the High Court the upper right pocket of the shirt cannot contain 35 currency notes of denomination of Rs.100/- unless they are folded;
- (3) The High Court also discarded the testimony of Badan Singh, PW1 on the ground that perhaps he had forced his currency notes in the pocket of the respondent; and
- (4) The High Court also found substance in the argument that the traces of phenolphthalein powder can come in the hands of resisting respondent.

The High Court allowed the appeal filed by the respondent and set-aside the judgment of the Special Court. The State of Madhya Pradesh being aggrieved by the said judgment has filed this appeal on the ground that the High Court was clearly in error in setting aside the well reasoned judgment of the trial court on totally erroneous and untenable findings.

According to the appellant - State of Madhya Pradesh, the finding of the High Court that \026

- (A) Badan Singh, PW1 had forced his currency notes in the pocket of the respondent is wholly untenable;
- (B) The currency notes of Rs.3500/- were recovered in the presence of Badan Singh PW1. The version has been fully supported by the two independent witnesses;
- (C) Badan Singh PW1 had fully supported the prosecution version. Independent witnesses Aditya

Chobey, PW6 and Surender Rai Sharma, PW11 also supported prosecution story. The High Court seriously erred in rejecting the prosecution version; and

(D) The High Court erroneously rejected the prosecution version on the ground that the bribe amount is not kept in the upper pocket of the shirt.

The State of Madhya Pradesh filed special leave petition against the impugned judgment.

The respondent in pursuance to the show-cause notice of this Court filed a detailed counter affidavit stating that the High Court has carefully re-appreciated and re-evaluated the evidence of the prosecution and conclusion arrived at by the High Court is based on correct appraisal of the evidence on record, therefore, no interference is called for by this Court as the appeal does not raise any substantial question of law for consideration of this Court in its extra-ordinary jurisdiction under Article 136 of the Constitution.

The respondent also mentioned that Badan Singh PW1, the complainant supported the story of prosecution. His version ought not to have been believed by this Court because he had harboured some grudge against the respondent, particularly when his own cousin Sri Krishna PW3 did not support the prosecution version. At no stage, the respondent had alleged mala fides against the appellant. We find no merit in this argument of the respondent.

According to the respondent, the prosecution version does not inspire any confidence because according to the prosecution story, the bribe amount was recovered from the upper pocket of the shirt. Usually, bribe money is not kept in the upper pocket. This argument of the respondent is also wholly untenable.

It was urged by the respondent that the entire story of the prosecution is fabricated and no reliance should be placed on it by the Court. The learned counsel appearing for the respondent submitted that a lenient view may be taken because sending the respondent to jail after ten years would lead to tremendous hardship.

We have carefully considered the rival contentions. The fact of recovery of Rs.3500/- from the respondent has been fully corroborated by Badan Singh, PW1 and also by two independent witnesses, Aditya Chobey PW6 and Surender Rai Sharma PW11.

We do not find any merit in the submission that Badan Singh PW1 because of previous enmity had falsely implicated the respondent in the instant case. The respondent had placed no material to substantiate this argument.

We also do not find any merit in the statement that the guns were not seized. According to the prosecution version, when the respondent demanded and accepted the bribe of Rs.3500/-, there was no question of seizing the guns.

On careful examination of the prosecution evidence and the documents on record, we too come to the definite conclusion that the respondent is clearly guilty of the offence and the Special Judge was fully justified in convicting the respondent under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The High Court erroneously set aside the well reasoned judgment of the Special Judge.

In view of the evidence and documents on record, it is difficult to uphold the impugned judgment and consequently, the impugned judgment of the High Court is set aside and the judgment of the Special Judge is restored.

It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large scale corruption retards the national building activities and everyone has to suffer on that count. As has been aptly observed in *Swatanter Singh v. State of Haryana* reported in (1997) 4 SCC 14, corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseably clouds around the conduct of the officer and gain notoriety much faster than the smoke.

This Court in *Hazari Lal v. State (Delhi Administration)* reported in (1980) 2 SCC 390, observed that where the recovery of money coupled with other circumstances lead to the conclusion that the respondent received gratification from some person, the Court would certainly draw a presumption under Section 4(1) of the Prevention of Corruption Act. In the instant case, the recovery of 35 notes of the denomination of 100 is fully proved by Badan Singh PW1 and two other independent witnesses Aditya Chobey PW6 and Surender Rai Sharma PW11.

On consideration of the totality of the circumstances of this case, the prosecution has been able to establish on the basis of evidence on record that the respondent had received bribe and, therefore, he is guilty of the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The respondent was convicted by the Special Judge on the basis of overwhelming evidence on record. The High Court without appreciating the facts of this case in proper perspective set-aside the judgment of the Special Court. The reasoning given by the High Court for setting aside the judgment cannot stand the test of scrutiny for a

moment and in this view of the matter. Consequently, the judgment and sentence awarded by the Special Court is restored. The appeal filed by the State of Madhya Pradesh deserves to be allowed. It is directed accordingly.

JUDIS