

CASE NO.:
Appeal (crl.) 643 1995

PETITIONER:
BIRANCHI NARAYAN MOHANTY

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT: 14/12/2000

BENCH:
K.G.Balakrishna, U.C.Banerjee

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

K.G. BALAKRISHNAN

This appeal is directed against the conviction and sentence of the appellant under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. During the relevant period, the appellant was working as Assistant in the office of the Teshsildar. The appellant was entrusted with the work relating to mutation of names in the Revenue record. PW-11, Jogendranath Dhal, approached the appellant on 24.2.82 with 11 mutation applications in respect of different persons. The prosecution case is that the appellant demanded Rs.7/- per application as illegal gratification from PW-11. PW-11, reluctantly, agreed to pay Rs.6/- per application and as he had no enough money to pay for all the applications he submitted only three applications to the appellant and paid Rs.18/- and promised the appellant that he would come after two days to submit the remaining of the applications. The appellant told him that he would not be present in office on 27.2.82 and directed PW-11 to come on 26.2.82. PW-11 was annoyed by the demand of illegal gratification by the appellant and straightaway went to the office of the Inspector of Vigilance and reported about the demand of bribe made by the appellant. Based on the information given by PW-11, a case was registered and a trap was proposed to be laid on 26.2.82. PW-11 gave Rs.48/- to the Inspector of Vigilance along with eight mutation applications and a slip containing the names of all the 8 applicants. Usual preparations were made for the trap and PW-11, along with the other members of the trap party, reached the office of the Tehsildar on 26.2.82. PW-11 handed over the said eight applications and the currency notes to the appellant. Thereupon, the members of the trap party seized the currency notes from the appellant and on chemical examination using sodium carbonate solution the appellant's hands were found to contain

Phenolphthalein powder. The detection report was prepared and on completion of the investigation, charges were framed against the appellant.

The appellant admitted before the trial court that he had received Rs.48/- from PW-11, but he denied having received any illegal gratification. He alleged that on 21.2.82, DW-1, Rabinarayan Naik, had entrusted a sum of Rs.48/- to PW-11 with instructions to hand it over to the appellant for the purchase of four litres of mustard oil from Betanati. According to the appellant, PW-11 had withheld the letter handed over to him by Rabinarayan Naik, DW-1, and simply handed over Rs.48/- to the appellant to cheat him. The appellant had also alleged that PW-11 was in the habit of cheating 'Adivasis' of the locality and on their behalf he used to file false mutation applications. The appellant further stated that the appellant had filed a complaint against PW-11 with the local MLA and there ensued an inquiry against PW-11 at the instance of the Addl. District Magistrate terms with the and that owing to the said incident, PW-11 was on inimical appellant. The trial court as well as the High Court disbelieved the version of the appellant and found the appellant guilty.

Learned senior counsel, Mr. S.B. Sanyal contended before us that the case against the appellant was not satisfactorily proved. It was also argued that the appellant had not received any amount by way of illegal gratification and the amount recovered from the appellant was paid by PW-11 for the purchase of mustard oil. We do not find much force in the contention advanced by learned counsel for the appellant in view of the clear and satisfactory evidence adduced by the prosecution that PW-11 had visited the appellant on 24.2.82 and that he had submitted 11 applications and the appellant demanded Rs.7/- per application and unless this amount was paid he would not issue any notice on those applications. It is also pertinent to note that along with the money recovered from the appellant, the eight mutation applications were also found to be in possession of the appellant. The three applications, which were filed earlier, were also found in the office of the appellant. The defence plea set up by the appellant is highly improbable. Even according to the appellant himself, he was not having good relationship with PW-11. Therefore, it is not likely that DW-1 would have requested PW-11 to hand over Rs.48/- to the appellant for the purchase of mustard oil. Even if such a demand was made by DW-1, PW-11 could have declined the same. The appellant had also contended that DW-1, Rabinarayan Naik, had reminded the appellant to purchase the mustard oil through a letter which was passed on to him through another friend, namely, DW-2, Trailokyanath Mohapatra, and this letter was not produced in court. All these facts would only prove that the defence set up by the appellant is highly improbable. The appellant could not give any other satisfactory explanation for having received Rs.48/- from PW-11. The courts below have rightly held that the appellant accepted the tainted money as illegal gratification.

The learned counsel for the appellant lastly prayed that the sentence awarded may be reduced as the appellant has suffered other consequential punishment of loss of Govt. job. Having regard to this fact, we reduce the sentence of imprisonment from one year to a period of six months. The sentence regarding fine shall, however, remain unaltered.

The appeal is dismissed accordingly. The appellant shall surrender forthwith to undergo the sentence of imprisonment.

JUDIS