

**IN THE COURT OF THE SPECIAL JUDGE, C.B.I., COURT NO.III,
BHUBANESWAR.**

PRESENT :Sri B.N. Das,
Special Judge, C.B.I.,
Court No.III, Bhubaneswar.

T.R. No. 6/35 OF 2013/2008
(Arising out of R.C. 16(A)/ 2008)

Date of argument : 20.8.2014
Date of Judgment : 27.8.2014

REPUBLIC OF INDIA

Versus.....

Amulya Mohan Acharya, aged about 60 years,
Son of Late Keshab Chandra Acharya,
Vill. Babajitota Sahi, P.S. Baidyanathpur, Berhampur,
Dist. Ganjam, working as Senior Director,
(Medical & Health Service), Ispat General Hospital,
Rourkella, at present Qrs. No.F-215, Sector-19,
Rourkela.

... ... Accused

For the Prosecution : Sri K. C.Mishra, Sr. P.P., CBI,
Sri Ashish Jaiswal, P.P.CBI.

For the Accused : Shri S.K. Mund & Associates,
Advocates.

J U D G M E N T

The above named accused stands charged under Sec. 7 and Sec.13(2) read with Sec. 13(1) (d) of Prevention of Corruption Act for accepting bribe of Rs.1000/- from the complainant as illegal gratification being a public servant.

2. The case of the prosecution in brief is that the accused was working as Senior Deputy Director (Surgery) of Ispat General Hospital (IGH), Rourkela. Complainant Rama Nayak being the non-entitled patient registered himself in the Ticket-cum-Cash Receipt Counter after paying requisite fees and obtained ticket for treatment before the Specialist Doctor at O.P.D. When he went to accused-doctor, after noting the registration number, he checked the complainant and informed him that his condition was serious and for his better treatment, he demanded Rs. 1000/-. On 19.6.2008 while coming for treatment to the residence of accused, he was prescribed by some medicines by the accused. After being aggrieved by demand of bribe, the complainant lodged a complaint before the CBI Rourkela Unit and accordingly R.C. Case No. 16(A)/2008 was registered against the accused doctor. Before laying trap, pre-trap procedure was conducted during which, the complainant produced Rs.1000/- consisting of two numbers of 500 rupee denomination which were treated with phenolphthalein powder. The test was demonstrated to the witnesses and subsequently said notes were entrusted to the complainant with instruction to hand over the same to the doctor on specific demand. Accordingly, the trap team proceeded to the spot with necessary direction. The complainant along with one Sudhir Minz went inside the residential compound. While the accused-doctor prescribed medicines, demanded bribe of Rs.1000/- and ultimately accepted the same. After getting signal, other trap members rushed to the spot, both hands of the accused were washed with sodium carbonate solution which turned pink and subsequently tainted currency notes were recovered from the possession of the accused. Inspector D.K. Kabi collected all the relevant records from the complainant and subsequently a post trap memorandum was prepared. The sealed bottles were sent to C.F.S.L. for chemical examination. On completion of investigation, charge sheet was submitted against the accused to face his trial in the Court of law after pleading not guilty to the charges levelled against him.

3. The plea of the defence is one of complete denial of the occurrence and further stand has been taken by the defence that a false case has been foisted against the accused in order to cause harassment.

4. The points emerge for consideration are as to:

(i) Whether the accused was a public servant and discharging the duties of the Specialist ?

(ii) Whether he demanded and accepted bribe of Rs.1000/- from the complainant, abusing his official position ?

(iii) Whether the bribe amount was recovered from the exclusive possession of the accused ?

5. In order to establish the charge against the accused, all together 12 witnesses have been examined on behalf of the prosecution, out of whom P.W.1 is the Director of Medical and Health Services, P.W.2 is the Senior Scientific Officer C.F.S.L., P.W.4 is the Chief Medical Officer of IGH, P.W.5 is the Director of IGH Rourkela, P.W.6 is the Asst. Chief Cashier IGH, P.W.7 is the Senior Hospital Attendant, P.W.8 is the Deputy Nursing Superintendent P.W.9 is the Deputy Manager, R.S.P. Rourkela, P.W.3 is Social Security Assistant, P.W.11 is the Asst. Grade-I of FCI Rourkela. P.W.10 and 12 are Investigating Officers. Only one witness who is a retired SAIL Officer has been examined on behalf of defence.

6. The complainant and trap laying officer have not been examined by the prosecution. No doubt the evidence of complainant is vital to prove the fact of demand and acceptance of bribe by the accused as well as recovery of the same from the accused. Even if, the complainant had lodged a written report before C.B.I. stating therein that the accused demanded bribe of Rs.1000/- from him to render better treatment, said written report has not been proved by him. It is stated in the said written report that for better treatment, the accused demanded Rs.1000/- from him and in absence of said amount, he told that no further treatment will be given by him. No

doubt, the trap laying officer is a vital witness for the prosecution who could not be examined by the prosecution due to his death. The prosecution depends upon the rest witnesses examined in this case.

7. From the evidence of P.W.4, it is revealed that on being directed by Director, Medical and Health Services, he produced the documents which were seized vide Ext.6. The letter dtd. 6.8.2008 and the copy of pay slip of accused along with Circular were also seized vide seizure list Ext.6. The original book let of SAIL Conduct and Disciplinary Appeal Rules vide Ext.10 was also seized by him.

8. P.W.5 has furnished certain information regarding working of accused Amulya Mohan Acharya in IGH and condition of service vide Ext.7 and 11. Certain documents were seized vide seizure list Ext.12, which reveal the procedure of treatment in respect of outsiders and their registration. The attendance register vide Ext.14 and OPD register vide Ext.15 have been seized

vide Ext.12 which reveal that the accused –doctor was on duty during the relevant period. Similarly documents vide Ext.16 goes to reveal that during the relevant period, the accused was in service. Similarly Ext.17 reveals the registration number of the patient.

9. P.W.6 has stated the procedure of treatment by the outsider and deposit of cash by the complainant. But he has no idea about the treatment of the complainant by which doctor. P.W.7 speaks about the duty of accused in O.P.D. No.42 and she has proved the prescription slips vide Ext.20 given by accused doctor. P.W.8 is the Deputy Nursing Superintendent in whose presence, the documents such as OPD register has been seized vide Ext.21 and same has been released in her zima. P.W.9 has proved the allotment order of the quarter of the accused as well as occupation of his quarter. All the above witnesses have not stated anything regarding demand and acceptance of bribe by the accused. Only it is established from their evidence that the accused was working as a doctor in the IGH and complainant had registered his name as out-door patient after depositing required fees.

10. P.W.1 is the Sanctioning authority, who has accorded sanction of prosecution in respect of the accused vide Ext.1. He has admitted in his cross-examination that the daily labourers are not entitled for free treatment in IGH and such persons are to deposit the required fees for consultation with physician of the IGH.

11. P.W.3, 10 and P.W.11 were present at the time of trap. It is revealed from the evidence of P.W.3 that he came to know from Inspector D.K. Kabi that accused demanded bribe of Rs.1000/- for giving good treatment to the complainant and the complainant produced the written report in the C.B.I. Office. According to him, two numbers of 500 rupee G.C. notes were produced by the complainant for payment to the accused which were treated with phenolphthalein powder and demonstration was made in his presence. He was asked to handle the notes and his hand wash was tested with the solution which changed the colour to pink. The tainted notes were kept in the pocket of the informant by Inspector Kabi with a direction to hand over the same to the accused on demand and to give signal. The official witness Sudhir Minz P.W.11 was also directed to accompany with the complainant. Subsequently, he along with others proceeded to the spot. According to him, Mr. Minz, P.W.11 stood near the entrance, the accused opened the grill gate, the informant entered inside and subsequently getting signal, all of them rushed to the spot. According to him Inspector Kabi caught hold both hands of accused and S.K. Behera prepared the solution. The fingers of the accused were deeped separately in the solution which turned pink and same were kept in dry clean bottles which were sealed and wrapped in papers containing his signature. Further his evidence reveals that on being asked by the Inspector Mr. Kabi, the accused pointed out the table where the tainted notes were kept and same were recovered and seized. At the time of his cross-examination, he has categorically stated that he remained about 20 meters away from the residence of the accused while complainant and P.W.11 went inside the residence of the accused. After getting signal, Inspector D.K. Kabi went inside along with other witnesses.

He clearly states that he does not remember actually which witness caught hold of which hand of accused. He does not state anything whether the tainted notes were handed over to the accused and how same was kept on the table and how same were recovered.

12. P.W.11 has admitted to have gone inside the house of the accused along with the complainant. According to his evidence, after delivery of the amount, complainant gave signal by touching his head, when CBI staffs entered into the premises. He does not state if in his presence the transaction was made and accused accepted the bribe amount from the complainant. He also states that the tainted notes were lying on the left side of the table kept on the verandah. Accused brought out the notes which were checked by P.W.3. Same does not find corroboration by the evidence of P.W.3. In his cross-examination, P.W.11 has admitted that he had no talk with the complainant at CBI Office. According to him, Mr. Kabi made demonstration regarding reaction of phenolphthalein powder with sodium carbonate solution which is not corroborated by the evidence of P.W.3. At the time of his cross examination, P.W.11 has stated that he remained outside boundary gate and the complainant went inside and after coming outside, the complainant gave signal. He could not know what happened inside the residence of accused. Admittedly, both P.W.11 and 3 have not accompanied with the complainant and both have not seen the transaction. Even if the complainant has not been examined by the prosecution, the witnesses like P.W.3 and 11 have not disclosed anything about the recovery of the notes from the exclusive possession of the accused and whether the tainted notes were handed over to him by the complainant. In absence of examination of complainant as well as trap laying Officer, it is difficult to come to a conclusion that there was demand by the accused and also acceptance of bribe by him. Regarding recovery of bribe amount, there is also discrepancy in the evidence of prosecution witnesses for which same cannot be relied upon.

13. It is revealed from the evidence of P.W.10 that he reported himself at Rourkela Unit Office on 19.6.2008 at about 11 a.m. to 12 noon when other witnesses were present. He does not remember who demonstrated reaction of phenolphthalein powder in solution and he had no contact with official witnesses those who had come to the Unit Office before pre-trap preparation. He had not known the complainant earlier and he does not remember if the written complaint was with the complainant or with Mr. Kabi. Further, he states that he cannot say if in the CBI office at Bhubaneswar he was present at the time of registration of FIR. He has no knowledge about the original FIR if sent to Unit Office. He has not ascertained about the nature of profession of the accused. He has not remembered if D.K. Kabi has prepared any pre-trap memorandum. He admits that it has not been written in the post trap memorandum that on being asked by D.K. Kabi the accused pointed out the table where tainted notes were kept. Even if he was present at the spot, he has not remembered if the complainant was having the prescription at the time of handing over bribe. He does not remember if tainted notes were given to the complainant without being wrapped in any paper. He states to have taken hand wash of accused as per direction of D.K. Kabi which finds discrepancy that of the evidence of P.W.3 and 11. As regards recovery of tainted notes from the exclusive possession of accused and the procedure maintained, there are discrepancies in the evidence of above three witnesses.

14. P.W.12 took charge of investigation from D.K. Kabi and seized the relevant documents of IGH Rourkela. He has examined the accused and other witnesses and recorded the statement of the complainant. On completion of investigation, he submitted charge sheet after obtaining sanction of prosecution from the competent authority. In his cross-examination, he has admitted that there is no endorsement that original FIR was received in Unit Office Rourkela. He has admitted that the residence of complainant is 15 kms. away from IGH. He has no idea if the tainted money was kept in the envelope and was handed over by the complainant before trap.

Further he has admitted that there is no endorsement in the formal FIR that the complaint was read over and explained to the complainant and no signature of the complainant has been obtained by the prosecution.

15. P.W.2 is the Scientific Officer, C.F.S.L. who has proved his report vide Ext.2 stating that phenolphthalein sodium carbonate and water were in the contents of three bottles.

16. In absence of examination of complainant as well as trap laying officer, it is difficult to come to a conclusion that accused has demanded bribe of Rs.1000/- from the complainant and he has accepted the same from him only. Regarding recovery of tainted notes, there are discrepancies in the evidence of prosecution witnesses.

17. Learned counsel for the accused brought the notice of the Court to a decision report in AIR 2013 Supreme Court 3368 in case of State of Punjab V. Madan Mohan Lal Verma in which Their Lordships have held as follows:

“ 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 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 a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.”

18. In the instant case, even if there was recovery of tainted notes and the hand wash of the accused was taken which turned pink, there is no conclusive evidence that from the exclusive possession of the accused, the tainted notes were recovered and the accused had handled the same before trap.

19. D.W.1 has stated that there are Fertiliser Town Hospital and Government Hospital, Rourkela near to Jalda which is 15 kms. Away from IGH and free treatment is being given in Government Hospital. Further it is revealed that the doctors of IGH Hospital are eligible to see treatment of patients of Fertiliser Town Hospital after depositing the money and showing the receipts.

20. After assessing the evidence of prosecution, I come to the conclusion that the demand of bribe, acceptance of the same and recovery of the tainted notes from the exclusive possession of the accused are not at all established beyond all reasonable doubt, the accused is entitled to get benefit of doubt. Accordingly, the accused is held not guilty of the offence Under Sec. 7 and Under Sec.13(2) read with Sec. 13(1) (d) of Prevention of Corruption Act and he is acquitted from the above charges under Sec.248(1) Cr.P.C.

The seized documents be returned to the person from whom seized and the zimanama if any, be cancelled after four months of appeal period, if no appeal is preferred and in the event of appeal subject to the order of appellate court. The M.Os be destroyed after four months of the appeal period, if no appeal is preferred and in the event of appeal, subject to the order of appellate Court.

SPECIAL JUDGE,CBI, COURT NO.III,
BHUBANESWAR.

Dictated & corrected by me and pronounced in the open Court today on 27th August, 2014 under my seal and signature.

SPECIAL JUDGE, C.B.I., COURT NO.III,
BHUBANESWAR.

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION:

P.W.1	Dr. Om Prakash Agrawal.
P.W.2	Bimal Chandra Purkrit.
P.W.3	Susanta Kumar Naik.
P.W.4	Purnendu Kumar Satpathy.
P.W.5	Dr. Pramod Kumar Rath.
P.W.6	Sukadeb Tanty.
P.W.7	Suvra Bose.
P.W.8	Prafulla Kumari Mohanty
P.W.9	Sanyaj Kumar Deo.
P.W.10	Srikant Kumar Behera.
P.W.11	Sudhir Minz.
P.W.12	Ashish Kumar Mishra.

LIST OF WITNESSES EXAMINED FOR THE DEFENCE:

D.W.1	Anirudha Acharya.
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LIST OF DOCUMENTS ADMITTED BY

THE PROSECUTION :

Ext.1	Sanction order.
Ext.1/1	Signature of P.W.1 on Ext.1.
Ext.2	Report.
Ext.2/1	Signature of P.W.2 on Ext.2.
Ext.2/2	Signature of Director.
Ext.3	Pre-trap memorandum.
Ext.3/1	Signature of P.W.3.
Ext.4	Post trap memorandum.
Ext.4/1	Signature of P.W.3 on Ext.4.
Ext.5	Sketch Map.
Ext.5/1	Signature of P.W.3 on Ext.5.
Ext.6	Seizure list.
Ext.6/1	Signature of P.W.4 on Ext.5.
Ext.7	Letter.
Ext.8	Pay slip.
Ext.9	Circular.
Ext.10	Book let.
Ext.7/1	Signature of P.W.5.
Ext.11	Letter.
Ext.11/1	Signatures of P.W.5 on Ext.11.
Ext.12	Seizure list.
Ext.12/1	Signature of P.W.5 on Ext.12.
Ext.13	Zimanama.

Ext.13/1 Signature of P.W.5 on Ext.13.
Ext.14 Copy of attendance register.
Ext.14/1 Endorsement by P.W.5.
Ext.15 Copy of hospital attendance.
Ext.15/1 Endorsement of P.W.5 on Ext.16.
Ext.16 Particulars of service of accused.
Ext.16/1 Endorsement of P.W.5 on Ext.16.
Ext.17 Copy of registers.
Ext.17/1 Signature and endorsement by P.W.5.
Ext.18 Copy of promotion order.
Ext.18/1 Endorsement by P.W.5.
Ext.19 Receipt.
Ext.19/1 Signature of P.W.6 on Ext.19.
Ext.17/2 Relevant Entry.
Ext.19/2 Signature of A.M. Acharya.
Ext.20 Prescription slip.
Ext.21 Seizure list.
Ext.21/1 Signature of P.W.8 on Ext.21.
Ext.22 Zimanama.
Ext.22/1 Signature of P.W.8 on Ext.22
Ext.23 Seizure list.
Ext.23/1 Signature of P.W.9 on Ext.23.
Ext.24 Zimanama.
Ext.24/1 Signature of P.W.9 on Ext.24.
Ext.25 Allotment order relating to quarter.
Ext.26 Occupation report of doctor.
Ext.3/2 Signature of P.W.10 on Ext.3.
Ext.27 Signature of P.W.10 on M.O.IV.
Ext.4/2 Signature of P.W.10 on Ext.4.
Ext.5/2 Signature of P.W.10 on Ext.5.
Ext.3/3 Signature of P.W.11 in Ext.3.
Ext.4/3 Signature of P.W.11 on Ext.4.
Ext.28 Arrest memo.
Ext.28/1 Signature of P.W.11 on Ext.28.
Ext.29 Personal search memo.
Ext.29/1 Signature of P.W.11 on Ext.29.
Ext.5/3 Signatures of P.W.11 on Ext.5.
Ext.12/2 Signature of P.W.12 in Ext.12.
Ext.13/2 Signature of P.W.12 in Ext.13.
Ext.6/2 Signature of P.W.12 in Ext.6.
Ext.21/2 Signature of P.W.12 in Ext.21.

Ext.22/2 Signature of P.W.12 in Ext.22.
Ext.23/2 Signature of P.W.12 in Ext.23.
Ext.24/2 Signature of P.W.12 in Ext.24.
Ext.30 F.I.R.
Ext.30/1 Endorsement of S.P. CBI in Ext.30.
Ext.30/2 Signature of Rama Nayak on the written complaint.

LIST OF DOCUMENTS ADMITTED BY THE DEFENCE :

Nil

LIST OF M.Os. MARKED BY THE PROSECUTION:

M.O.I Sample bottle of handwriting after demonstration.
MO II & III Sample bottle of hand wash.
Ext.IV Cover containing G.C. Notes.

LIST OF M.Os. MARKED FOR THE DEFENCE:

Nil.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

