

IN THE COURT OF THE ADDITIONAL SPECIAL JUDGE  
(VIGILANCE): BHUBANESWAR.

Present:-

Shri M.K. Mishra, LL.B.,  
Addl. Special Judge, Vigilance,  
Bhubaneswar.

T. R No. 41 of 1999  
(Arising out of Cuttack Vigilance P.S Case  
No. 8 of 1997 )

Date of argument- 09.12.2013  
Date of Judgment- 17.12.2013

S t a t e

-Versus-

Simadri Makardhwaj Prusty, age- 72 years,  
S/o- Late Biswanath Prusty, At –  
Bhanjanagar, P.S – Bhanjanagar, Dist –  
Ganjanm.

....Accused

Advocate for the prosecution- Sri B.B.Sahu, Special P.P.  
Vigilance, Bhubaneswar  
Advocate for Accused Shri S.K.Mund, Advocate

Offence Under Sections:-Sec.7/ 13(1)(d)  
Punishable U/s.13(2) of the P.C Act.

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J U D G M E N T

The aforesaid accused in this case is facing his trial being charged U/s.7/13(1) (d) punishable U/s.13(2) of the prevention of corruption Act.

2. The case of the prosecution may be

summerised as follows:

The complainant namely, Pitamber Behera is the neighbour of one Dharmendra Nayak at Gorakabar Lane, P.S- Sea Beach, Puri Town. The aforesaid Dharmendra Nayak wanted to take new electrical connection to his house for which he had approached the complainant and requested him to help him in getting the electric connection. Then both of them went to the office of Jr. Engineer, Electrical GRID Co., at Red Cross Road, Puri for the said purpose. On 28.1.1997 the complainant along with his neighbour Dharmendra Naik met the J.E Electrical who is accused in this case at his residence, and requested him to provide the new electrical connection to the house of Sri Nayak. The complainant inquired from the accused regarding the expenditure to be incurred for the said purpose to which the accused had asked him to pay Rs.1200/- towards cost of the wire, meter, G.I pipe, contractor fees etc and further Rs.5000/- to him towards bribe. Since the complainant and his neighbour Shri Nayak expressed their inability to pay such amount, the accused then asked him to pay Rs.3,000/- towards bribe. On their further request the accused agreed to get the work done on getting cash of Rs.3,000/- including the cost of the meters and other expenses. The accused had instructed the complainant to give Rs.3,000/- on 3.2.1997 during evening time at his residence. The complainant had collected the documents on behalf of Sri D. Nayak, whose house was to be electrified, and produced the same before the accused. The complainant being aggrieved by illegal act of the accused

had informed the matter to S.P. Vigilance, Cuttack, basing on which the case was registered U/s.13(2) read with section 13(1) (d) and U/s.7 of the P.C Act 1988, and the S.P. Vigilance, Cuttack Division had directed for the investigation of the case. Accordingly, OIC, Vigilance, Cuttack had registered the case and Inspector Sri S.K. Ray was directed to take up the investigation of the case in accordance of the order of the DSP, Vigilance, Bhubaneswar. After registration of the case, the I.O of this case Sri S.K. Ray along with witness Ashok Ku. Rath, Jr. Clerk office of the C.S.O, Bhubaneswar, one Nirmal Ch. Mohapatra, Jr. Clerk office of the Sub-Collector, Bhubaneswar, Khurda, the complainant Pitamber and other vigilance staffs had appeared in the office of the DSP, Vigilance, Bhubaneswar at 10.30 A.M on 3.2.1997, and the witnesses were identified by the vigilance officer. The fact of the allegation was informed by the complainant, who had narrated in brief regarding the allegation made by him in the F.I.R. The complainant produced 30 number of G.C Notes each having denomination value of Rs.100/- and the currency numbers were mentioned in the preparation report. The witnesses namely, Nirmal Ch. Mohapatra was instructed to accompany the complainant in order to over hear the conversion and to become witnesses to the transaction in between the complainant and the accused. The over hearing witness Shri Mohapatra was instructed to relay the signal by robbing his fore head by his right hand as regards the payment and acceptance of the illegal gratification by the accused. The personal search of the complainant was taken

and found nothing except the wearing apparels. Similarly, the personal search of the over hearing witness was taken. From his possession a wrist watch and a dot pen were recovered along with his wearing apparels. The demonstration about the use of phenolphthalein powder with sodium carbonate solution was shown by Kumar Mangaraj, Constable Vigilance at DSP Office, Bhubaneswar to the witnesses. Sri Mangaraj first of all wash both of his hands with soap and water and prepared the sodium carbonate solution in a clean dry bottle. He, thereafter brought out a little quantity of sodium carbonate solution from the bottle to a clean aluminum mug. Then he put his fingers of both hands into the solution but the colour of the same did not change. Thereafter, he washed his hand and the tainted G.C notes produced by the complainant with the phenolphthalein powder. Thereafter Sri Mangaraj had put his fingers of both his hands in sodium carbonate solution which became pink. The aforesaid solution was collected in a clean bottle with proper label and seal, and signed by the witnesses and marked Ext.A towards sample. Shri Mangaraj washed his hand with soap and water. The tainted G.C notes were wrapped in a four fold piece of white paper and kept in the left side wearing shirt chest pocket of the complainant with instruction to hand over the said tainted money to the accused on his demand. Shri Mangaraj was directed to remain present in the DSP Office and Shri Behera ASI was asked to accompany the raiding party to the spot with prepared sodium carbonate solution and other sealing

materials. But no sodium carbonate powder and phenolphthalein were carried to the spot. The copy of the preparation report was made over to the witness Ashok Ku. Rath for comparison with the tainted money after detection. All the members including the complainant washed their hands with soap and water and proceeded for puri and arrived at Puri at 2.15 P.M. After their arrival near the residential house of the accused which is located at Water works Road, Puri. The trap party members took their position at vantage points. The complainant being accompanied by over hearing witnesses Nirmal Ch. Mohapatra went towards the residential house of the accused but after few minutes they both came back and informed that the accused had been to a hotel for his lunch and would arrive after some time. Thereafter the complainant and the over hearing witness waited near the residence of the accused, and other members of the trap party waited at their respective points. At about 3.45 P.M the over hearing witness informed about the return of the accused to his house. Thereafter, the complainant followed by the over hearing witness met the accused in his house and requested to process the matter immediately. The accused had verified the documents in his presence and asked about the demand money to which the complainant handed over the bribe money seeing the transaction, the over hearing witness Nirmal Ch. Mohapatra who was standing at the entrance point relayed the signal to other trap team by robbing his forehead with his right hand at about 4.05 P.M. Immediately after receiving the signal

regarding the demand and acceptance of the bribe amount, the trap party members rushed to the spot i.e. inside the residential house of the accused. Sri N. N. Nayak, the Inspector of Vigilance and S. R. Pattnaik, Inspector Vigilance had caught hold of the right and left hand of the accused respectively after disclosing their identity. The D.S.P, Vigilance Shri P. M. Das disclosed his identity and the identification of the witnesses. On being challenged the accused admitted to have received an amount of Rs.3,000/- from the complainant which he had kept in his left side wearing full pant pocket and he took the plea that the complainant came into his bed room when he was sleeping on his bed and thrust the incriminating documents relating to taking electrical connection to the residential house of Dharmendra Naik along with cash of Rs.3,000/-. But on his refusal to receive the amount, the complainant inserted the money along with the above document in his left side pant pocket and went away. Thereafter, in presence of the witnesses the numbers of currency notes received from the possession of the accused was tallied as against numbers mentioned in the preparation report by the witness Ashok Ku.Rath and numbers matched with each other. The hand wash of Shri Ashok Ku. Rath was taken in sodium carbonate solution which turned to pink colour, and the same was collected in a clean bottle with seal. The wash of wearing full pant of the accused was taken and the left side wearing full pant pocket was taken with sodium carbonate solution which turned to pink colour, which was collected in a clean dry

bottle with label and seal. The wash of money purse which was kept in that pocket was taken which became pink and that solution was also kept in a bottle with seal and label. The personal search of the accused was taken and a cash of Rs.70/- along with money receipt and some documents were found and seized. Apart from that the hand wash of the accused was taken with sodium carbonate solution in presence of the witnesses which turned to pink and the same was collected in a clean dry glass bottle with seal and label. The I.O of this case had made the seizure at the spot in respect of the incriminating articles and prepared the seizure list and kept the facsimile of the seal duly attested by the witnesses Ashok Rath and handed over the brass seal to him. The trap team then apprehended the accused and they came back to their head quarters. The accused was arrested and forwarded to the Court. On completion of investigation, the I.O applied for sanction for the prosecution of the accused. After sanction order was received, the charge sheet was submitted against the accused U/s.13(2) read with section 13(1) (d) and U/s.7 of the Prevention of Corruption Act for which charge has been framed accordingly and the trial was taken up.

3. The plea of the accused was that he has been falsely implicated in this case. According to him he has never demanded nor accepted any bribe from the complainant. It is the specific plea of the accused that the cost of a new electrical connection is assessed after an application for the same is submitted, and in this case no

application for a new electrical connection had been made, and there was no occasion to make any demand for bribe.

4. Points for determination in this case are :
  - (i) Whether the accused being a public servant and employed as Jr. Engineer, Electrical Division, Puri, at his rented residential house at Gorakabar Road, Puri had accepted an amount of Rs. 3,000/- from the complainant Pitamber Behera as gratification other than legal remuneration as a motive or reward for giving electrical connection to the house of the neighbour of the complainant Dharmendra Nayak which is a official work, for which it is punishable U/s.7 of the P.C. Act, 1988?
  - (ii) Whether on the same day time and place, the accused being a public servant working as J.E Electrical, Puri, abused his position of the public servant by corrupt and illegal means obtained a pecuniary advantage to the extent of Rs.3000/- by accepting the same from the complainant Pitamber Behera to give new electrical connection to the house of his neighbour Dharmendra Nayak and thereby committed an offence punishable U/s. 13(1) (d) punishable U/s.13 (2) of P.C.Act.
5. In order to prove it's case, as many as 7

witnesses have been examined, out of whom, P.W.1 is the sanctioning authority for prosecution of the accused. P.W. 2 is the then Asst. Director of SFSL, Bhubaneswar who had examined the M.O.I to M.O.V, and opined his report, and P.W. 3 is the over hearing witness Nirmal Ch. Mohapatra. P.W. 4 was the magisterial witness. P.W. 5 is the complainant. P.W. 6 is the clerk in the office of the Executive Engineer, Electrical Division, Puri, who has produced the service book of the accused before the Vigilance Department, which was seized and left in his zima. P.W. 7 is the I.O of this case.

On the other hand, no witness has been examined on behalf of the accused. Similarly, Ext.1 to Ext.17 series are marked on behalf of the prosecution as per the list of exhibits, and M.O I to M.O IX are also marked on behalf of the prosecution. But no documentary evidence is adduced on behalf of the accused.

6. P.W. 1 the sanctioning authority has stated in his evidence to have gone through the relevant documents and papers which were produced by the I.O, before him and discussed about the case with the I.O, and after his satisfaction, he has accorded his sanction under Ext.1.

The P.W.2, the chemical examiner of SFSL, Bhubaneswar has stated to have issued his report vide Ext.2 after he had examined the contents of Ext.A, B, C, D and E which are marked as as M.O.I to M.O.V. According to him phenolphthalein was detected in all the M.O I to M.O.V.

P.W. 3 who is the over hearing witness and accompanied the complainant to the residential house of the

accused has stated that the preparation note was prepared after the demonstration of detail was shown and he has also identified his signature appearing on the preparation report. According to him copy of the preparation report was supplied to witness A.K. Rath with a instruction to compare the number of currency notes after recovery from the accused . He has categorically deposed to have accompanied the complainant to the house of the accused but both of them came back after a little, since the accused was absence from his house. After some time both of them again went inside the house after the accused returned to his home. But the complainant went inside the home where the accused was present while he himself stood near the window he has clearly deposed that Pitamber who is the complainant of this case gave indication to him about the handing over the tainted currency notes to the accused, and he relayed the signal by touching his fore head. Thereafter, the other members of the trap party rushed inside the spot room. The accused was caught hold of and his hand wash was taken, which turned to pink with chemical solution. He stated that witnesses Akshaya Ku. Rath compare the number of currency notes with the numbers already noted down in the preparation report and declared that the numbers matched with each other.

P.W. 4 Ashok Ku. Rath has stated in the same manner, and according to him, after the accused was caught hold of after receiving tainted amount, his hand wash was taken with the help of chemical solution which turned to pink.

Then he brought out the tainted currency notes from inside the pant pocket of the accused and compared the number of recovered notes with that of the number also noted in the preparation report which tallied with each other. He has also deposed that wash of left side pocket of the accused and his purse was taken which turned to pink.

P.W. 5 who is the complainant of this case basing on which the case was registered and trap party was arranged and consequently the accused was trapped. He deposed that on 1.2.1997 he had accompanied his friend Narasimha Reddy to the office of S.P. Vigilance. He has identified the F.I.R marked under Ext. 4 which was scribed and lodged by him as his friend was illiterate. After two days, he again went to the office of the S.P. Vigilance, and thereafter they arrived near the house of the accused who was not present in his house. He then left the spot while others waited but he has admitted to have not remembered if the vigilance officers had recorded his statement. The witness was examined by the prosecution U/s. 154, I.E. Act through a volley of leading questions wherein he admitted regarding the contents of the F.I.R in nutshell. But he has denied to have stated before the vigilance officers that the preparation report was made in the office of the S.P. Vigilance, and that he produced Rs.3000/- with chemical powder applied with the same, and demonstration was shown with regards to the reaction of one type of chemical solution. His cross-examination discloses that he has not stated before the I.O to have produced 30 number of

currency G.C notes. He has completely given a blow to the case of the prosecution not only in his examination in chief since he has not supported the case of the prosecution to have produced any currency notes or if he had handed over any tainted notes to the accused or if the accused made any demand of any illegal gratification from him.

P.W. 6 is a formal witness since he has admitted to have produced the Service Book of the accused before the I.O which was seized and left in his zima. The I.O of this case has stated during his examination in chief regarding registration of complaint lodged by the complainant and registration of the case, and the fact of his laying the trap and the investigation of the case and the preparation report and the trap of the accused and the detection report and of the formalities of the investigation. But his cross-examination discloses that he has not seen the complainant after he reached at the spot house along with over hearing witness. The evidence of the complainant indicates that after he came to the spot, and went to the house of the accused being accompanied with the over hearing witness, since the accused was found absent, he returned back and the other party members were present at his residence. But he had never stated have if after arrival of the accused he again went to his house. Rather the I.O, who is a vigilance officer has admitted in the first line of his cross-examination that he has not seen the complainant after he reached at the spot house along with the over hearing witness. So, the evidence of the complainant gets some support from the evidence of

the I.O, as because the complainant has stated to have not returned again to the case house, after he returned back since the accused was absent.

7. Considering the aforesaid oral evidence on record and the documentary evidence in a case of this type the sine qua non of the alleged offence is the demand and acceptance of the illegal gratification by a public servant. Undoubtedly the accused was a public servant at the time of the trap. The prosecution must prove that the accused was demanding the illegal gratification and the gratification, was handed over to him in form of tainted notes by the complainant. The complainant himself has given a fatal blow to the prosecution as because he has not stated any thing if he had handed over any illegal gratification to the accused by himself, or if the accused had received any amount from him towards the illegal gratification. In absence of any such evidence, the case of the prosecution stands on extremely weak leg. Moreover, the person whose house was to be newly electrified, and who was the applicant for getting his house electrified has not been examined in this case, nor any of his family members has been examined by the I.O, nor cited as a witness, in order to corroborated the prosecution story. The F.I.R indicates that the person whose house was to be newly electrified is one Darmesh Naik, S/o- Bisu Naik of GoraKabar Lane, P.S-Sea Beach,Puri . He had accompanied the complainant to the house of the accused where the deal amount was fixed. Since the said Dharmendra Naik has not been examined and as during his cross-examination the I.O

has admitted that that he is a not a relevant witness of this case, it sounds something peculiar. Rather as the case relates to the electrification of the house of of Dharmendra Naik and for that purpose the tainted amount was paid, on the act of the I.O not to cite Dharmendra Naik as a prosecution witness further weakness of the prosecution case.

8. In the case of Saraj Mal V. State of Delhi reported in AIR 1979, it is held by the Hon'ble Court that in a case of bribe, mere recovery of money divorced from the circumstances that under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In the present case at hand as prosecution has not proved the fact of demand and acceptance of bribe amount, for that sine qua non of the aforesaid evidence has not been complied with.

9. Similarly the evidence of the over hearing witness reveals that he was present at the door while the accused entered inside the spot room. But there is no evidence that the conversation and the act which took place in side the spot room was either visible to him or if he was in a position to hear the same. This makes it clear that the over hearing witness has not heard or seen the activity which took place in side the spot room. So, the only important witness was the complainant himself who has not supported the case of the prosecution. Rather he has introduced a new story to have gone to the spot house with the over hearing witness and returned back since the accused was absent. He has never

stated to have gone to the spot house again for the purpose of trap. So, the evidence of the over hearing witness and that of the complainant are quite inconsistent. Moreover, the dictum of the Apex Court as per (2009) 15 SCC P-200 and 2009 6 SCC Page-587 indicates that the demand for illegal gratification is a sine qua non for constituting the offence. As discussed above, the prosecution has totally failed to prove by way of any cogent, clear and satisfactory evidence that the accused was demanding the illegal gratification from the complainant for the electrification of the house of one Dharmendra Naik and that he had received the tainted amount from the complainant. In absence of any such evidence and as the material witness Dharmendra Naik was neither examined by the I.O nor he has been cited as a witness for that entire case of the prosecution suffers from serious latches for which the accused is entitled to get a benefit of doubt.

10. Hence, considering the aforesaid circumstances both oral and documentary evidence and taking into consideration the serious latches of the prosecution as discussed above, I am of the opinion that prosecution has failed to prove it's case against the accused U/s.7 of the P.C Act,1988 and Section 13(1)(d) punishable U/s.13(2) of the P.C Act, 1988 beyond all reasonable doubt and he is acquitted thereunder.

The seized currency notes be deposited in the state exchequer since the complainant has not stated in his evidence to have procured those currency notes and

there is no other claimant to it, the zimanama be canceled and other seized articles be destroyed, four months after the appeal period is over, if no appeal is preferred, if preferred subject

Addl. Special Judge, Vigilance, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 17th day of December, 2013.

Addl. Special Judge, Vigilance, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1	Bijaya Ch. Jena
P.W.2	Satyananda Moharana
P.W.3	Nirmal Ch. Mohapatra
P.W.4	Ashok Ku. Rath
P.W.5	Pitamber Behera
P.W.6	Nimai Charan Giri
P.W.7	Saroj Ku. Ray

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1	Sanction order
Ext.1/1	Signature of P.W.1 on Ext.1
Ext.2	C. E. Report
Ext.2/1	Signature of P.W.2 on Ext.2
Ext.3	Preparation report
Ext.3/1	Signature of P.W. 3
Ext.4 to 12	Seizure list
Ext.4/1 to 12/1	Signature of P.W.3

Ext.13	Dictation report
Ext.13/2	Signature of accused
Ext.10/2	Signature of P.W
Ext.14	F.I.R
Ext.14/1	Signature of P.W. 5 on F.I.R
Ext.3/2	Signature of Ashok Ku. Rath on Ext.3
Ext.15	Specimen of the facsimile seal
Ext.15/1	Signature of P.W.4
Ext.16	Seized four fold paper
Ext.16/1	Signature of P.W.4
Ext.3/3	Signature of P.W. 5 on Ext.3
Ext.17	Signature of P.W. 6 on Ext.17
Ext.17/1	Signature of P.W. 6 on Ext.17
Ext.17/2	Zimanama
Ext.17/3	Signature of P.W. 6
Ext.14/2	Endorsement & signature of DSP, Vigilance, Bhubaneswar, P.M. Das on Ext.14.
Ext.14/3	Endorsement & signature of S.P. Vigilance, R. P. Singh, on Ext.14
Ext.14/4 Vigilance,	Endorsement and signature of OIC, Cuttack on Ext.14.
Ext.14/5	Formal F.I.R.
Ext.14/6	Signature of OIC, Vigilance, Cuttack.
Ext.3/4	Signature of P.W. 7 on Ext.3
Ext.9/3	Signature of P.W.7 on Ext.9
Ext.4/3 & 8/3	Signature of P.W. 7 on Ext. 4 to Ext.8.
Ext.10/3	Signature of P.W. 7 on Ext.10
Ext.11/3	Signature of P.W. 7 on Ext.11

Ext.11/4	Copy of preparation report
Ext.12/3	Signature of P.W.7 on Ext.12
Ext.12/4	A bunch of paper
Ext.12/5	Signature of witness Dharmendra Naik
Ext.13/4	Signature of P.W. 7 on Ext.13
Ext.17/4	Signature of P.W. 7 on Ext.17
Ext.17/5	Signature of P.W.7 on Ext.17

List of Exts. Marked for Defence

Nil

List of M.Os. marked for prosecution

M.O.I	Sample bottle
M.O.II	Sample bottle
M.O.III	Sample bottle
M.O.IV	sample bottle
M.O.V	Sample bottle
M.O.VI	Facsimile
M.O.VIII	Money purse
M.O.VIII to M.O.VIII/29	30 number of tainted one hundred rupees currency notes.
Ext.IX	Full pant

Addl. Special Judge, Vig.,Bhubaneswar.

