

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO 1318 OF 2008

C.B.I. through Superintendent of Police		Appellant(s)	
Versus			
Naval Kishore		Respondent(s)	

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay, Nagpur Bench in Criminal Appeal No. 187 of 1996, dated 27.09.2005. By the impugned judgment and order the High Court has acquitted the respondent herein and set aside the judgment and order passed by the Trial Court in Special Case No. 21 of 1994, dated 09.05.1996, whereby the Trial Court has convicted the respondent herein for offence punishable under Section 161 of the India Penal Code, 1860 (for short 'the IPC') and Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced him to undergo rigorous imprisonment of two years along with a fine of Rs. 2000/- and in default rigorous imprisonment of three months, respectively.
2. The facts in brief are: It is the case of prosecution that on 07.04.1986 the respondent, a manager in the Jalamb Branch of Central Bank of India, had demanded a sum of Rs. 500/- by way of illegal gratification for releasing balance loan amount of Rs. 1000/- from the complainant-Shri Deochand Laxman Ghate (PW-1). Upon such demand, PW-1 had lodged a complaint with the Anti Corruption Bureau, Akola, dated 08.04.1986, whereafter a police raid was planned to be conducted along with Sheshrao Baliram Kale (PW-10) and Gautam Sadasiva Bansod (PW-11) as panch witnesses. On 09.04.1986, the raid was conducted and accordingly, the respondent was caught red handed while demanding and accepting a sum of Rs. 300/- from the complainant through one other person (A2) in presence of the panch witnesses and another witness, Bhanudas Yashwant Mirge(PW-7). Upon completion of investigation, the respondent was charged for the offence punishable under Section 161 of the IPC and Sections 5(1)(d) and 5(2) of the Act. It is stated that after receiving the amount, the respondent had handed over the

money to A2 and therefore, A2 was also charged for offence punishable under Section 165-A of the IPC. The respondent-accused and A2 pleaded not guilty and the case was committed to trial.

3. The prosecution has examined 15 witnesses including PW-1, PW-10 and PW-7 in support of its case. While the respondent has not examined any witness, A2 examined DW-1 in support of his defence.
4. PW-1 has testified in respect of the demand made on 07.04.1986 and 09.04.1986, the mode and manner of payment of Rs. 300/- to the respondent, his acceptance of the amount and subsequent handing over the said amount to A2. PW-10 has corroborated the evidence of PW-1 on the fact of manner of payment and its acceptance by the respondent and A2. PW-7 has corroborated the version of PW-1 and PW-10 on the aspect of payment and acceptance of Rs. 300/-. DW-1 has testified in respect of a sale transaction of bicycle between PW-1 and A2 and the payment of Rs. 300/- being made by PW-1 in furtherance of such purchase by him from A2 through the respondent.
5. Upon appreciation of evidence, the Trial Court has decided both the issues against the respondent and concluded that (i) the prosecution has not only established the acceptance of illegal gratification other than legal remuneration but also proved that it has been accepted by the respondent herein and thus, committed an offence under Section 161 of the IPC; and (ii) the respondent being a public servant has obtained for himself pecuniary advantage of Rs. 300/- by corrupt and illegal means and thereby committed the offence under Sections 5(1)(d) and 5(2) of the Act. The Trial Court has rejected the evidence of DW-1 in respect of acceptance of money by A2 for sale of a bicycle to PW-1, however acquitted A2 from the charge of abetment of aforesaid offence on the grounds that firstly, the demand for illegal gratification was not made in the presence of A2 and secondly, the prosecution has not proved the guilt of A2 from the evidence on record. The respondent was sentenced to undergo rigorous imprisonment for a period of two years along with a fine of Rs. 2000/- and in default of payment rigorous imprisonment of three months.
6. Aggrieved by the same, the respondent had preferred an appeal before the High Court and inter alia urged the following grounds for his acquittal:
  - a. the demand has been proved by the prosecution relying upon the oral evidence of PW-1 and the Panch witnesses and since their evidence contradicts on the point of payment of bribe, it only establishes demand but fails to establish the acceptance of such payment.
  - b. while the evidence of PW-7 and PW-10 suffers from contradictions, the testimony of PW-10 cannot be relied upon to corroborate PW-1's evidence as he is a usual Panch witness in Police raids and possibility of him being tutored could not be omitted.
  - c. the testimony of DW-1 in respect of transaction of money for purchase of a bicycle by PW-1 from A2 sufficiently proves to reasonable extent of raising preponderance of proof of the purpose of payment of money, which demonstrates that the prosecution case has not been established beyond reasonable doubt.
7. The High Court has elaborately commented upon the evidence of the prime witnesses, i.e., PW-1, PW-7 and PW-10 and, accepting the aforesaid grounds urged by the respondent, observed that though the

evidence on record sufficiently establishes the demand, it does not establish the manner of payment of money beyond reasonable doubt given that PW-10 is a usual formal panch witness, the testimonies of PW-7 and PW-10 contradict on the manner of handing over of the amount by the respondent to A2 and the defence version of A2 in respect of payment of money by PW-1 for purchase of bicycle could not be prima facie ruled out. In light of the aforesaid, the High Court has concluded that the Trial Court ought not to have convicted the respondent relying upon the same and therefore, set aside the judgment and order passed by the Trial Court and acquitted the respondent.

8. Aggrieved by the aforesaid judgment and order, the appellant-Bureau is before us in this appeal.
9. We have heard Shri P.P. Malhotra, learned Additional Solicitor General appearing for the appellant and Shri Basava Prabhu Patil, learned senior counsel for the respondent, accused.
10. Shri Malhotra, would submit that the High Court was not justified in acquitting the respondent on the aforesaid counts. He would contend that the evidence of PW-1 was well corroborated by the evidence of PW-7 and PW-10 in respect of the manner of payment of the amount demanded by the respondent and the High Court ought not to have rejected the evidence of PW-10 on the ground of him being a formal panch witness. He would bring the decisions of this Court to our notice to strengthen his submissions.
11. Per contra Shri Patil would support the judgment and order of the High Court in acquitting the respondent and setting aside the judgment and order of the Trial Court.
12. We have carefully perused the evidence on record including the testimonies of PW-1, PW-7 and PW-10 and the judgments and orders passed by the Courts below.
13. We are of the considered view that the evidence of PW-7 and PW-10 indeed suffers with contradiction inasmuch as the handing over of the amount from respondent to A2 upon payment by PW-1 is concerned. While the former states that while the money was transferred by respondent to A2 on hearing that the police party was approaching, the latter testifies that the said amount was transferred no sooner than it was paid to the respondent. Further, the evidence on record elucidates that PW-10 is a usual panch witness and hence is a formal witness only and his evidence alone cannot be relied upon to bring the truth to light. Therefore, in absence of any cogent and unimpeachable testimony corroborating the prosecution version beyond reasonable doubt in respect of acceptance of amount paid in demand of illegal gratification, the defence version in respect of payment of money in a sale transaction of a bicycle cannot be obliterated. Thus, we are fully convinced that the High Court has not committed any error whatsoever in coming to the conclusion that in light of apparent contradictions in the evidence on record, the Trial Court was not justified in convicting the respondent.

14. In view of the above, we do not see any merit in this appeal and the same is dismissed.

Ordered accordingly.

.....J.  
[H.L. DATTU]

.....J.  
[RANJAN GOGOI]

NEW DELHI,  
OCTOBER 30, 2013.

ITEM NO.134

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1318 OF 2008

C.B.I. through Superintendent of Police Appellant (s)

VERSUS

Naval Kishore Respondent(s)  
bringing on record addl. documents) (with appln. for

Date: 30/10/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU  
HON'BLE MR. JUSTICE RANJAN GOGOI

For Appellant(s) Mr.P.P. Malhotra, ASG  
Mr. B.V. Balram Das, Adv.

For Respondent(s) Mr. Basava Prabhu S Patil, Sr. Adv.  
Mr. vijay K. Jain, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

| [ Charanjeet Kaur ] | | [ Vinod Kulvi ] |  
|Court Master | |Asstt. Registrar |

[ Signed order is placed on the file ]