

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1779 OF 2010

SHANKARLAL SHARMA

...Appellant(s)

Vs.

STATE OF MADHYA PRADESH

...Respondent(s)

J U D G M E N T

Abhay S.Oka, J.

1. Though the appeal was repeatedly called out, none appeared for the appellant. With the assistance of the learned counsel appearing for the respondent-State of Madhya Pradesh, we have gone through the record.

2. The appellant is the accused who was prosecuted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (For short, the PC Act). The Special Court acquitted the appellant. By the impugned judgment, the High Court has reversed the finding of the Special Court and has converted the order of acquittal into conviction.

3. The case of the prosecution is that one Ramsevak (the complainant) had made an application to the Estate officer of M.P. Housing Board for grant of a true copy of a lease agreement. He needed a copy of the lease agreement as he was building a house on the property subject matter of the lease. At the relevant time, the appellant was serving as an Assistant Grade-III in the office of the Estate Officer. The case of the prosecution is that on 7th October, 2003, the appellant-accused demanded illegal gratification of Rs.1,000/- (Rupees one thousand) from the complainant for supply of a copy of the lease. The complainant lodged a complaint on 15th October, 2003 to the Superintendent of Police. Acting on the basis of the complaint, a trap was laid on 15th October, 2003 at 2.30 p.m. According to the prosecution case, the trap was successful and the currency notes were recovered from the custody of the appellant-accused.

4. The learned Special Judge held that both the demand and acceptance were not proved. We find that the complainant did not support the prosecution and he was declared hostile. In paragraph 24 of the impugned judgment,

the High Court has noted that no person accompanied the complainant as the surveillance or shadow witness at the time of trap. The submission of the learned counsel appearing for the respondent is that though the complainant may not have supported the prosecution, the complaint was proved through a prosecution witness. Secondly, he submitted that the trap was established. He would, therefore, submit that the presumption under Section 20 of the PC Act will squarely apply.

5. A Constitution Bench judgment of this Court in a recent decision dated 15th December, 2022 in Criminal Appeal No.1669 of 2009 (*Neeraj Dutta vs. State (Govt. of NCT of Delhi)*) holds that when the complainant does not support the prosecution, the demand made by the accused can be otherwise proved by the prosecution even on the basis of circumstantial evidence. While saying so, the Constitution Bench has reiterated that the offer by the bribe giver and the demand by the public servant have to be proved by the prosecution as a fact in issue. The Constitution Bench reiterated that mere acceptance or receipt of illegal gratification without anything more would not make it an offence under Section 7 or Section 13(d) of the PC Act.

The Constitution Bench also held that only when a proper demand is made by a public servant and is accepted by the bribe giver and in turn, the amount tendered by the bribe giver is received by the public servant, it would be an offence under Section 13(1)(d) and in particular Clauses (i) and (ii) thereof. The Constitution Bench reiterated the well settled law that presumption under Section 20 does not apply to Clauses (i) and (ii) of Section 13(1)(d) of the PC Act.

6. Turning to the facts of the case, as noted earlier, the complainant did not support the prosecution and therefore, through the complainant, the prosecution could not establish the demand allegedly made by the appellant. Moreover, even the complaint could not be proved as the complainant did not support the prosecution. Through a witness who was present at the time of giving complaint, the prosecution may have proved the signature of the complainant on the complaint. But obviously, the contents thereof cannot be said to have been proved. As noted by the High Court in paragraph 24, no witness accompanied the complainant at the time of trap. The High Court has not found that there was any circumstantial evidence which could establish the demand of illegal gratification by the appellant.

7. Therefore, we are of the considered opinion that in the present case, the factum of demand was not established by the prosecution. Hence, the judgment of the High Court cannot be sustained. Accordingly, the appeal is allowed. The impugned judgment of the High Court dated 6th March, 2010 is hereby set aside and order of acquittal passed by the Special Court is hereby restored.

8. The bail bonds of the appellant stand cancelled.

.....J.
(ABHAY S.OKA)

.....J.
(RAJESH BINDAL)

NEW DELHI;
February 23, 2023.

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). 1779/2010

SHANKARLAL SHARMA

Appellant(s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

Date : 23-02-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s)

Ms. Mridula Ray Bharadwaj, AOR (Not present)

For Respondent(s)

Mr. Harmeet Singh Ruprah, Adv.
Mr. Saurabh Mishra, A.A.G.
Mr. Sunny Choudhary, AOR

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

The appeal is allowed in terms of the signed non-reportable judgment.

Pending application, if any, also stands disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(NAND KISHOR)
COURT MASTER

(Signed non-reportable judgment is placed on the file.)