



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Appeal (Sb) No. 2556/2023

Babu Lal S/o Shri Chhitarmal Meena, Aged About 54 Years, R/o Biharipura Bassi, Police Station Bassi, Dist. Jaipur, The Then Bank Manager, Bank Of Baroda, Branch Paloda, Dist. Banswara.

-----Appellant

Versus

State Of Rajasthan, Through Pp

-----Respondent

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For Appellant(s) : Mr. Madhav Mitra, Sr. Adv. Assisted by  
Rakesh Choudhary.  
Mr. Kapil Meena.  
Ms. Jaya Mitra.  
Mr. Nitin Goklani.  
For Respondent(s) : Mr. M.K. Trivedi, PP.

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**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**Judgment**

**Judgement Reserved on : 08.08.2024**

**Judgement Pronounced on : 16.08.2024**

1. The sole appellant Babu Lal has challenged his conviction by judgment and order dated 1.12.2023 passed by the Learned Special Court, Anti Corruption, Udaipur in Special Sessions Case No. 5/ 2011 arising out of FIR No 237/2009 registered with ACB Police Station, Jaipur.

By the impugned judgment, the Learned Trial Judge has convicted the appellant for offences under Section 7 of the Prevention of Corruption Act (hereinafter referred to as "PC Act") and awarded 1 year simple imprisonment along with fine of Rs.10,000/-. Similar imprisonment and fine has been imposed for offence under Section 13(1)(d)/13(2) of the PC Act and in default



of payment of fine, additional 1 month simple imprisonment has been awarded.

2. The prosecution case as disclosed in the written complaint dated 10.9.2009 of PW.1 Bagheswar Ahari is that the complainant is a Teacher and had applied for personal loan from Bank of Baroda at Paloda Branch in the District Banswara in August 2009. The Bank Manager (Mr. B.L. Meena present appellant) asked for Rs.5,000/- for sanction of loan of Rs.1 lakh. Rs.5000/- was demanded as gratification. The complainant met the assistant of the bank Mr. Ram Niwas Meena. Ram Niwas also said that Rs.5000/- gratification would be required for sanction of loan of Rs.1 lakh. The complainant further stated that since he does not want to bribe a public servant, action should be taken against them as both are adamant not to pass the loan without gratification. On 8.9.2009, the complainant had visited the bank and again Ram Niwas Meena had asked for Rs.5,000/-, only then the loan would be sanctioned. At that time under compulsion, the complainant agreed to pay the gratification.

The correctness of the aforesaid complaint (Ex.P1) was verified confidentially on 11.09.2009 by recording conversation. The ACB Authorities asked the appellant to appear on 12.09.2009 for trap, however, the complainant expressed his inability due to some conference of the teachers as the complainant was Vice President of the Association. On 13.9.2009 it was Sunday, hence, it was decided to arrange trap on 14.9.2009. On 14.9.2009, a trap was arranged and the graft money of Rs.3000/- was recovered from the drawer of the table of the appellant. The appellant



immediately stated to the ACB Authorities involved in the trap that Rs.3000/- was processing fee of the loan which the complainant had not paid. Moreover, no work of the complainant was pending with the appellant as loan of Rs.80,000/- against request of Rs.1 lakh was already sanctioned and deposited in the bank account of the complainant. Rs.80,000/- was sanctioned according to financial capacity of the complainant to repay.

3. After the aforesaid exercise, the ACB registered FIR No. 237/2009 vide Ex.P.31 on 16.9.2009. After completion of the investigation, charge sheet was submitted and accordingly, trial resulted in conviction.

4. Mr. Madhav Mitra learned Senior counsel for the appellant submits that application for loan of the complainant (PW.1) was admittedly received in August 2009, whereunder the complainant had demanded loan of Rs.1 lakh to pay the same to the private lenders. Considering the financial capacity of the complainant on 29.08.2009, the bank sanctioned loan of Rs.80,000/-. On 8.9.2009, Rs.80,000/- was transferred to the bank account of the complainant, however, the complainant kept on insisting for sanction of Rs.1 lakh loan and on subsequent occasion along with his criminal associates, complainant came to the branch in drunken condition and committed abuse and other misdemeanor against the bank employees. Being frustrated, the complainant filed a false complaint with the ACB on 10.09.2009 and accordingly, trap was set on 14.9.2009. Learned Senior Counsel contends that no work of the complainant was pending with the appellant on the date of trap.



Learned senior counsel next contends that there is complete lack of evidence on demand of any graft by the appellant. Learned counsel asserts that unless demand and acceptance of bribe money is proved, coupled with the fact that sanction and disbursement of loan of the complainant was not pending as on the date of complaint or of trap as such the conviction is not sustainable in law.

Learned counsel for the appellant next contends that Ex.P.3 has been produced as transcript of conversation between the complainant and the appellant, dated 11.9.2009. The prosecution has failed to prove that the voice recorded was of the appellant. Further, on 11.9.2009 nothing was pending with the appellant in respect of sanction of loan to the complainant.

5. Learned counsel for the ACB contends that Ex.P.3, the conversation between the complainant and the appellant would go to show that demand of bribe of Rs.5000/- and reduced amount due to sanction of lesser amount of loan was there. Moreover, the authorities of the ACB Department have consistently supported the factum of trap and recovery of bribe money from the appellant: the complainant (PW.1) has supported demand and acceptance by the appellant. Since the appellant failed to give his voice sample on being demanded, the appellant cannot claim that his voice was not proved.

6. In the case of **Imamsab Moulasab Toragal Vs. The State of Karnataka** in **(Criminal Appeal No. 2553/2013)**, the Hon'ble Supreme Court considered the earlier judgment in **A. Subair Vs. State of Kerala** reported in **(2009) 6 SCC 507**,



wherein it was observed and held that in order to secure order of conviction of offence punishable under Section 7, 13(1)(D)/13(2) of the Prevention of Corruption Act, the prosecution has to establish the following ingredients:-

1. Demand and acceptance of bribe money.
2. Handling of tainted money by the accused on the day of trap (colour test).
3. Work of the complainant must be pending as on the date of trap with the accused.

In **Chandresha Vs State of Karnataka Lokayukt Police Kalburgi in Criminal Appeal No. 200105/2015** decided on 16.2.2022, the Hon'ble Supreme Court held that when the work of complainant is not pending before accused as on the date of trap the important ingredient to attract and complete the offence punishable under Section 7, 13(1)(d)/13(2) of the Prevention of Corruption Act cannot be sustained, identical view was expressed in **Karnataka Vs. Narayanswamy in Criminal Appeal No. 2506/2012.**

7. PW.1-complainant has admitted in cross-examination that the sanctioned amount of Rs.80,000/- was already transferred to his bank account on 8.9.2009, he further admitted that on the date of trap i.e. 14.9.2009, he had withdrawn Rs.40,000/- through cheque, the witness admitted the bank statements marked as Ex.D1 and D2 as correct one. The witness further admitted that he had got knowledge of the sanction of loan on the date of sanction itself. Thus from the oral and documentary evidences on the record, it is evident that on the date of trap no work of the



complainant was pending with the appellant, therefore, one of the ingredient to prove the charges whereunder conviction has been recorded is missing in this case, as such the conviction is fit to be set aside on this ground alone.

8. The next question for consideration is whether the prosecution has proved a case of demand and acceptance of bribe beyond all reasonable doubt.

9. In the case of **A. Subair Vs. State of Kerala** reported in **(2009) 6 SCC 507**, the Hon'ble Supreme Court stated in para 28 as follows:-

"28. It needs no emphasis that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration."

In **Soundarajan Vs. State Rep. By the Inspector of Police Vigilance Anti Corruption Dindigul** reported in **AIR 2023 SC 2136**, the Hon'ble Supreme Court stated the law as follows:-

"11..... To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26<sup>th</sup> July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused."



10. So far demand of gratification is concerned, the prosecution has relied on two evidences, first is statement of the complainant PW.1 and second one is the recording of conversation between the complainant and the appellant dated 11.9.2009.

11. The prosecution has failed to establish that one of the voice recorded was the voice of the appellant. None of the prosecution witnesses especially PW.1 Baleshwar Ahari and PW.5 Babban Mishra, who were directly involved in recording the conversation have stated that one of the voice in the conversation was of the appellant. More serious lapse is that PW.1 has not stated about any recording of conversation with the appellant on 11.9.2009. It has already been noticed that making of complaint and entire subsequent exercise was done only after the loan amount was transferred to the bank account of the complainant. Regarding proof of conversation recorded in tape-records, in the case of **Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra & Ors. reported in (1976) 2 SCC 17**, the Hon'ble Supreme Court stated as follows:-

"We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

- (a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.
- (b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.



(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy round in the Evidence Act."

Again in **Ram Singh & Ors. Vs. Col. Ram Singh** reported in **(1985) Suppl. SCC 611**, the Hon'ble Supreme Court reiterated the conditions necessary for admissibility of tape-records statement as follows:-

"(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."

Evidently, the voice of the appellant has not been recognized by any of the prosecution witnesses, especially the prosecution witnesses who were involved in getting the voice recorded. Therefore, only on the basis of Ex.P-3, which is transcript of the tape-records, it cannot be accepted as proof of the fact of recording of conversation.





Though PW.3 deposed that the complainant (PW.1) had disclosed to him that first sound was of the complainant and second was of the appellant but the complainant does not say that he had said anything to PW.3 or he had identified the sound of the appellant. PW.3 further admitted that at the time of trap, the conversation was recorded in the tape-recorder but sound was not very clear, whereas the Investigating Officer said that no such conversation was recorded. PW.4 Rajendra Kumar Gupta deposed that conversation recorded was hazy as sound of crowd was coming from that. PW.6 Ganesh Prasad Verma has also admitted that at the time of trap, the appellant had disclosed that Rs.3,000/- was paid to him against the processing fee charges of the loan. PW.6 Ganesh Prasad Verma had deposed that due to crowd in the bank, the sound recorded was not identifiable. The Investigating Officer PW.11 has also admitted that on the date of trap, the complainant had withdrawn Rs.40,000/- from his bank account. There is no other explanation for the purpose of withdrawal, rather the evidence of the complaint shows that the purpose was to implicate the appellant in false allegation. PW.12 admits that no conversation was recorded at the time of trap. These inconsistencies are material to consider whether charges of demand and acceptance of bribe is proved or not.

12. It is case of the appellant from inception that Rs.3,000/- which was paid to him at the time of trap was money of processing fee. Though PW.1 has categorically stated that the same was money of bribe paid on demand of the appellant. The sole testimony of PW.1 is not reliable in this regard for the reason



that in his explanation vide Ex.D.5, the appellant had asserted that since entire loan of Rs.1 lakh was not sanctioned, the complainant had grudge against the appellant and on previous occasions he had come to the bank and expressed his displeasure along with his associates. PW.12 Brajendra Singh Bhati, who had received the written complaint of the complainant has admitted that no identification of the sound of the appellant was done in the matter of conversation which is transcribed as Ex.P3. The witness further admits that at the time of trap, no conversation between the complainant and the appellant was recorded. PW.11 Kailash Singh Sandu, the Investigating Officer of the case has deposed that during investigation, he learnt that for not sanctioning entire Rs.1 lakh of loan, the complainant had grudge against the appellant. The complainant PW.1 has deposed that when he paid Rs.3,000/- to the appellant, appellant handed over Rs.40,000/- of the loan amount. He came out along with that amount of Rs.40,000/- at the gate and noded to the ACB Authorities. It is admission of the complainant that he had withdrawn Rs.40,000/- from his account on the date of trap. Evidently, the complainant had, in a pre-planned manner, staged the trap to falsely implicate the appellant because the record reveals that entire Rs.80,000/- was already transferred to the bank account of the complainant as such no cash of huge amount of Rs.40,000/- was required to be paid to the complainant. The complainant was carrying a grudge and he had planted a case which has not been supported by any other prosecution witnesses especially the ACB Authorities that the complainant paid



Rs.3000/- at the time of trap to the appellant and appellant handed over Rs.40,000/- of the loan amount, therefore, testimony of the complainant on question on demand cannot be accepted in the facts and circumstance narrated above.

13. From very inception especially at the time of trap spontaneous explanation of the appellant was that Rs.3000/- paid to him by the complainant was processing fee. The complainant (PW.1) has admitted that he was conscious of the fact that processing fee, service tax and documentation charged are to be borne by the complainant. He further admitted that 3% of the loan amount is charge as processing fee besides other expenses. His experience is based on the previous personal loan of Rs.50,000/- taken by him from the bank. PW.2 Ramakant Purohit, an Officer of the Bank of Baroda has deposed that from 3% to 5% of the loan amount are charged from borrower as processing fee besides stamp of Rs.100/-, this amount is charged either before sanction of the loan or it can be deducted from the account of the borrower.

It is not disputed that processing fee was not paid by the complainant borrower nor it was deducted from his bank account. PW.2 admitted in cross-examination that it is not necessary that processing fee should be recovered from the bank account only, the borrower can deposit in cash as well. In the last paragraph, he has given calculation of the processing fee + services charges, which is 10.30% + Expenses Charged and stamp duty, which comes to the calculation of Rs.3,000/-. The prosecution has not controverted the evidence of PW.2 on the aforesaid issue, rather



PW.2 is a competent witness, being an Officer of the Bank to make statement on the issue. PW.9 Ulhas Prabhakar Sangekar is General Manager of Bank of Baroda, who had accorded sanction for prosecution of the appellant, this witness has also deposed about requirement of processing fee, which is 3% of the loan amount along with service tax etc. Thus, from the evidence on the record, it transpires that no processing fee was ever paid by the complainant earlier nor processing fee was deducted from his bank account and instantaneous explanation of the appellant was that Rs.3,000/- was paid against processing fee creates doubt that the prosecution has proved acceptance of bribe.

In **N. Sunkarna Vs. State of A.P. reported in (2016) 1 SCC 713**, the Hon'ble Supreme Court stated as follows:-

"It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence Under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence.

It is only on proof of acceptance of illegal gratification that presumption can be drawn Under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55 and P. Satyanarayna Murthy v. The District Inspector of Police and Anr. (2015 (9) SCALE 724]."

Identical issue was there before the Hon'ble Madras High Court in **State Rep. By Superintendent of Police, Vigilance & Anti Corruption, Chennai Vs. Subramanian & Ors. reported in 2006 2 MLJ (Cri.) 1001** stated as follows:-





"23.....It is settled law that where the accused gives a spontaneous explanation right at the moment the crime is committed the explanation becomes res gestae within the meaning of Section 6 of the Evidence Act. Even if such statement is of doubtful admissibility in a case of corruption because the investigation could be set to have started before the statement was made, it should be admissible especially when it is exculpatory statement as the conduct of the accused under Section 8 of the Evidence Act. P.W.5 has expressly admitted that A.1 and A.2 Immediately explained MO.1 and MO.2 as having been received for flag day. This spontaneous reaction has been corroborated by the Head of the Office in his questioning under Section 313 Cr.P.C., But the prosecution has Insidiously scuttled the evidence of the same by posthumously casting him as the third accused. This afterthought is clearly attested by the fact that A.3 had signed as witness and stood as surety for A.1 and A.2.

24. In the landmark judgment of Sitaram Vs. State of Rajasthan (AIR 1975 SC 1432) the Apex Court held that mere recovery of money was not enough to entitle the drawing of presumption under Section 20 of the Prevention of Corruption Act. This principle was further reinforced by the same Supreme Court in the case of Surajmal Vs. State of Delhi (AIR 1979 SC 1408) in which it held that mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in this case was not reliable to prove payments of prior demand to show that the accused voluntarily accepted the money as illegal gratification. In this case obviously the circumstances in which the money was paid clearly and directly contradict the prosecution's imputations."

14. To summarise, the prosecution has failed to prove beyond reasonable doubt that any demand or acceptance of gratification was made out against the appellant. Furthermore, the prosecution case is apparent that entire allegation of demand and payment was made only after the loan was sanctioned and disbursed to the bank account of the of complainant. Since the





complainant had grudge for not getting loan of entire Rs.1 lakh as claimed, the complainant purposely put the authorities of ACB under misunderstanding and managed a concocted case against the appellant. The spontaneous explanation of the appellant that amount, as paid to the appellant, was against the processing fee of the loan and there is no evidence that processing fee was not paid earlier nor was deducted from the bank account. The prosecution failed to dispel the explanation of the appellant which creates further doubt on the prosecution case.

15. The Learned trial Judge has not considered the aforesaid infirmities in the prosecution case, as such the impugned judgment and sentence is hereby set aside and the criminal appeal stands allowed.

16. Let the appellant be exonerated from the liability of bail bond, however, the appellant shall execute a bond before the trial Judge that in the event of challenge of this judgment before the appellate authority, the appellant would appear and cooperate thereat.

**(BIRENDRA KUMAR),J**

sumer/-

