

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.156 of 2013**

Arising Out of PS. Case No.-13 Year-2006 Thana- C.B.I CASE District- Patna

Dr. Binod Kumar Verma @ Vinod Kumar Verma, son of Chandrika Ram,  
Resident of Mohalla-Chandmari Road, Lohiya Nagar,P.S.-Kankarbag,  
District.-Patna

... .. Appellant/s

Versus

The State Of Bihar Through The Vigilance

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr.Rajiv Kumar Verma, Sr. Advocate

Mr. Rajneesh, Advocate

Ms. Meeta Sinha, Advocate

For the Respondent/s : Mr.Rana Vikram Singh, Spl. PP Vigilance.

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL JUDGMENT**

**Date : 09-10-2023**

1. Heard the parties.
2. The instant appeal has been filed against the judgment of conviction and order of sentence dated 07.02.2013 passed by the learned Special Judge, Vigilance, Trap, Patna in Special Case No. 11 of 2006/04 of 2009, arising out of Vigilance P.S. Case No. 13 of 2006 instituted for the offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") for which the appellant has been held guilty and convicted and sentenced to undergo R.I. for 2 years with fine of Rs. 5,000/- for the



offence punishable under Section 7 of the PC Act and S.I. for one month in case of default of payment of fine by the impugned judgment and the appellant has further been convicted and sentenced for the offence punishable under Section 13(2) read with Section 13(1)(d) of the P.C. Act to undergo R.I. for one and half year with fine of Rs. 5,000/- and in case of default of payment of fine further for one month of S.I. and both the sentences have been ordered to run concurrently.

3. The Prosecution's case in nutshell is that on 10.03.2006 one Dr. Shailendra Kumar, the In-charge Medical Officer at Police Hospital, Nawada, made a complaint to the effect that he was earlier posted as Medical Officer at Primary Health Centre, Kako, Jehanabad from where he was relieved on 31.07.2015 but his salary concerned to the said posting place was due since December, 2004 and after his transfer, when he demanded to release the arrears of his salary from the appellant who was posted as Medical Officer In-charge, Primary Health Centre, Kako, Jehanabad, but the appellant demanded the bribe to release his arrears of salary. When the complainant



expressed his inability to pay the bribe then the appellant suggested him that he would clear his dues of two months so that he would pay him the demanded money and thereafter the rest part of the arrears would be cleared as per appellant's statement. Thereafter the complainant approached the Civil Surgeon, Jehanabad several times and made complaint against the appellant in writing but no action was taken against him and he also filed complaint to the District Magistrate, Jehanabad and informed the Health Commissioner vide e-mail about the wrong of the appellant but despite of all said efforts he did not get the arrears of his salary and even did not receive his last pay slip concerned to his previous posting place i.e. Primary Health Centre, Kako, Jehanabad. Thereafter, on the complaint of the complainant the Vigilance Department deputed Sub-Inspector namely, Prabhu Dayal (P.W.2) for verification of the allegation and on his confirmation the FIR was lodged on 16.03.2016 against the appellant and a trap team was constituted under the leadership of Md. Khairuddin Ansari (P.W.1), Deputy Superintendent of Police, Vigilance, Patna, after that, on 16.03.2006 Pre-Trap Memorandum was



prepared at the Vigilance Headquarter and the Trap Team rushed to the residence of the appellant situated at Chandmari Road, Patna on 17.03.2006 between 9:00 A.M. and 10:30 A.M., from where the appellant was arrested while accepting a sum of Rs. 3,500/- as a part of the demanded bribe from the complainant and thereafter the appellant was brought to the Vigilance Office and in presence of two independent witnesses the recovery of the said amount was made from the left pocket of the appellant's shirt.

4. As per further allegation, after recovery of the bribe amount, the fingers of both the hands and upper left pocket of the shirt of the appellant were washed in the solution of Sodium Carbonate and then the colour of solution turned into pink from white and the said solution which was used in washing was filled in three separate glass Jars and after completing the above necessary formalities the post trap memorandum was prepared.

5. The appellant's case was investigated by the police Inspector Mr. Shashi Shekhar Jha, who submitted chargesheet against the appellant under Sections 7 and 13



(2) read with Section 13(1)(d) of the PC Act and the sealed solutions was sent to the Forensic Science Laboratory (hereinafter referred to as "F.S.L.") for its analysis, thereafter the F.S.L. report dated 16.07.2011 was sent to the trial court on 21.07.2011. The sanction order to prosecute the appellant was obtained by the prosecution agency on 02.01.2007 but a valid sanction order to prosecute the appellant was received in the trial court on 21.07.2011 though the same had been issued long before it was received in the trial court.

6. The appellant stood charged for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of P.C. Act 1988. During trial, the prosecution examined 10 witnesses and in documentary evidence produced and proved the several documents and got them marked as Exhibits which are as under:

- Ext. 1. Pre-trap memorandum .
- Ext. 2. Post-trap memorandum.
- Ext.3 Forwarding letter.
- Ext.4. Endorsement and signature of one  
namely, Manju Jha on the complaint  
petition.



- Ext 4/1. Signature and endorsement of one  
namely, Neelmani on the complaint  
petition.
- Ext. 5. Verification report.
- Ext.6. Formal FIR.
- Ext. 4/3 to 4/5. Signature of one namely, Prabhu  
Dayal on Pre-trap memo.
- Ext. 4/6 to 4/8. Signature of Prabhu Dayal on  
Post-trap memo.
- Ext.7. FSL report.
- Ext. 8. Sanction order for prosecution.
- Ext. 4/6 to 4/8. Signature of one Md. Jamiluddin  
on pre-trap memorandum.
- Ext. 4/9. Signature of Md. Jamiluddin on post-  
trap memorandum.
- Ext. 9. Complaint petition.
- Ext. 4/9 to 4/11. Signature of Shailendra Kumar  
on Pre-trap memorandum.
- Ext. 6/1. Signature of the complainant Shailendra  
Kumar on FIR.
- Ext. 4/12 to 4/13. Signature of one Md. Salim and  
Lalan on Pre-trap memorandum.
- Ext. 4a/12 to 4a/17. Signature of one Md. Salim  
and Lalan on post -trap memorandum.
- Ext. 10. Application for admission of Sanction  
letter in the court.
- Ext. 5/9. Endorsement and signature of  
one Neelamani on verification report.



Art. Ext. I to XI. Seized currency notes of total value of Rs.3500/- in which 6 currency notes of Rs. 500/- and 5 currency notes of Rs. 100/-.

Art. Ext. XII. Seized shirt of appellant.

7. It has been argued by Mr. Rajiv Kumar Verma, learned Senior counsel for the appellant that the allegation of demanding bribe by the appellant from the complainant and accepting some part of the demanded bribe from him by the appellant is completely false and the said allegation was made at the instance of the complainant after hatching up a conspiracy, in fact, the complainant, Dr. Shailendra Kumar had professional rivalry with the appellant and the complainant who was posted as medical officer at Police Hospital Nawada, had developed very much influence in the police department and taking advantage of his influence he hatched up a conspiracy and got the appellant framed in a false trap case. It has been further submitted that as per post-trap memorandum, the appellant is said to have accepted the bribe money at his residence but admittedly the entire post-trap proceeding was reduced into writing in the vigilance office and even the recovery of the alleged



bribe money was made in the vigilance office and two private persons are stated to be the independent witnesses of the post-trap proceeding of whom one was not produced and examined by the prosecution before the trial court, though another witness was examined as PW 9 but he is not an independent person as he accepted in his evidence that he worked at a tea shop near the vigilance office and he used to serve tea in the vigilance office and moreover as per his evidence, the salutes of the vigilance department had surrounded the appellant when the alleged bribe money was being recovered from his pocket and according to evidence of this witness the recovery of bribe money from the shirt's pocket of the appellant was made in haste manner and not in proper and independent manner. Further submissions are that there are major contradictions amongst the statements of prosecution witnesses and several officials of the vigilance department, who are stated to be a part of pre-trap proceeding, were not produced and examined by the vigilance department in the trial of the appellant and the verification report was intentionally kept by PW-2, who initially verified the allegations of complaint petition, for



five days with him and thereafter the said verification report was produced by him without any explanation and then the FIR was lodged six days after the verification while as per the provisions of Section 154(1) of Code of Criminal Procedure, the complaint petition filed by PW-7 namely, Dr. Shailendra Kumar must be reduced as an FIR immediately after receipt of the same but the said provision was not followed by the vigilance department. It has been further argued that before conducting the post-trap proceeding, the members of the trap team were not searched, which is also a violation of law and the same is sufficient to cast a serious doubt in the post-trap proceeding and during trial, the bribe money which is said to have been recovered from the shirt's pocket of the appellant was produced before the trial court in an unsealed envelop and appellant's shirt which was seized, was also produced in unsealed manner. It has been further submitted that the trial court took cognizance of the alleged offences of P.C. Act against the appellant in the absence of a valid prosecution sanction though subsequently valid prosecution sanction was issued by the State Government but the same was received in the trial



court at later stage when major part of the appellant's trial had completed and accordingly, the appellant was subjected to trial in absence of a valid prosecution sanction and the same is sufficient to hold the entire proceeding which ran before the trial court, illegal in the eye of law.

8. On the contrary, Mr. Rana Vikram Singh appearing for the Vigilance Department has vehemently opposed the appeal and argued that the prosecution succeeded to prove the allegations levelled by the complainant in his allegation petition and also succeeded to prove the pre-trap and post-trap proceedings and there is sufficient evidence to show and prove that the appellant firstly, demanded a bribe of Rs. 5,000/- from the complainant Dr. Shailendra Kumar in lieu of releasing of his salary arrears and initially he took Rs. 1000/- from the complainant in presence of vigilance official and thereafter the appellant received the rest part of the demanded bribe which was Rs. 3,500/- and the same was given to him by the complainant in presence of vigilance official on the demand of the appellant and just after receiving the said bribe money the appellant was caught red handed with bribe



amount and thereafter the proceeding of post-trap was completed. It has been further argued that during trial the vigilance officials, who were the part of pre-trap and post-trap proceedings, were produced and they proved the relevant facts concerned to both the proceedings before the trial court and their evidence is sufficient to show and prove that the appellant firstly demanded the bribe money of Rs. 5,000/- and later took one thousand and three thousand five hundred rupees from the complainant on two occasions in presence of Vigilance Official and the FSL report, Ext-7, is sufficient to prove the recovery of the alleged bribe money from the possession of the appellant and as an arrear of the salary amount of the complainant was pending for clearance in the office of the appellant and the same was to be sanctioned by the appellant himself which was a reason for the appellant to make a demand of bribe from the complainant to release his arrear of salary and the appellant misused his position and harassed the complainant and demanded bribe of Rs. 5,000/- in lieu of releasing of his salary arrears and all these allegations which have been supported by the prosecution's witnesses before the trial



court are sufficient to attract the alleged offences for which the appellant has been convicted and there is no force in the instant appeal and the same is liable to be dismissed.

9. I have heard both the sides and perused the judgment impugned and evidences available on the case record of the trial court. When a public servant obtains or accepts or attempts to obtain an undue advantage whether in the form of money or otherwise with an intention to perform or cause the performance of public duty improperly or dishonestly then such act of such public servant may attract the offences punishable under Sections 7 and 13 of the P.C. Act, 1988 and when a complaint is made against such public servant regarding his demand of bribe money in lieu of discharge of his official function in favour of the aggrieved then in such a situation normally the Vigilance Department firstly verifies such allegation before proceeding to lodge a case under P.C. Act against such public servant though it is not mandatory for the Vigilance Department to make such verification of the allegation but it has become a practice to make the verification before proceeding to lodge a case against the



public servant so that a public servant can be saved from the frivolous and false allegations and such verification report can be deemed to be the foundation of the prosecution's proceeding.

10. In the present matter PW-7, Dr. Shailendra Kumar is stated to be an aggrieved, who filed a complaint petition before the Additional Director General, Vigilance Department, Patna on 10.03.2006 and that complaint petition was entrusted to a vigilance official namely, Prabhu Dayal PW-2 for verification. PW-2 visited the office of appellant with complainant and met him there and as per allegation, the appellant demanded Rs. 5000/- from the complainant in the presence of PW-2 and at that time the complainant gave Rs. 1000/- to the appellant and assured him to give the rest bribe money of Rs. 3,500/- at the appellant's house as per his direction. PW-2 visited the office of appellant with complainant on 11.03.2006 and all the verification proceeding was done on that day but he filed his verification report on 16.03.2006 before the Additional Director General, Vigilance Department, Patna and an extraordinary delay was made by him in submitting



the verification report. PW-2, Prabhu Dayal deposed in the cross-examination that he went to vigilance office on 11.03.2006 and the investigating officer inquired from him about the delay in submitting his verification report but he could not state the reason of delay in producing his verification report.

In this regard, learned counsel for the appellant has placed reliance upon a judgment of this court passed in the case of *Z.U. Ahamad vs. Union of India* reported in *2010 (4) PLJR page 115*. In the said cited case, the verification report of the concerned was not deemed to be reliable and considering this aspect as well as other circumstances the appellant (convict) of said case was acquitted. Similarly, in the present matter the verification report submitted by PW-2 appears to be highly suspicious as the same was not produced by the PW-2 immediately despite he having completed the verification process just in one day after the receipt of the complaint petition but he kept his verification report with him for 4-5 days without any proper explanation and before the trial court he could not explain the reason of his delay in submitting his



verification report in the office of Vigilance Department and the said circumstance goes against the prosecution.

11. As per the prosecution, after the recovery of bribe amount of Rs. 3,500/- from the left pocket of the shirt of the appellant both the hands of the appellant, his shirt's pocket were washed in the solution of sodium carbonate and after wash the said solution turned into pink colour and thereafter the washed materials were kept in three separate jars which were sealed but as per the statement made by PW-10 who investigated the case of the appellant, the recovered bribe money was not produced in a sealed envelop before the trial court and according to him the envelop containing the bribe money was not having the signature of any member of trap team or complainant or any independent person and that envelop was not in sealed condition. The position in which the alleged recovered bribe money was produced before the trial court, an apprehension of tampering the said money cannot be ruled out and the said circumstance goes against the prosecution. Similarly, the shirt of the appellant was also not produced in a sealed position and in this regard the investigating officer



remained careless.

12. In the present matter, two private persons other than the officials of the vigilance department are stated to be the witnesses of the post-trap proceeding concerned to the recovery of the alleged bribe money from the possession of the appellant. Among them one witness namely, Lalan was not produced and examined by the prosecution and only one witness Md. Salim was produced and examined. He deposed in his examination-in-chief that at the time of alleged occurrence he was present at a tea shop then the officials of Vigilance Department came at the shop and took him along with them at their office and he found one person being caught hold by the vigilance officials and Rs. 3,500/- was recovered from the shirt's pocket of the said person. He deposed in the cross-examination that he is an illiterate person and Lalan, second independent witness of the post-trap proceeding, worked at a tea shop of one namely, Chhotu and the tea was served in the vigilance office from the tea shop of Chhotu and he and Lalan made their signature at the places where the vigilance officials asked them to make their signature. From the



evidence of this witness, it is clearly apparent that he worked in mechanical manner at the direction of vigilance officials and the other independent witness namely, Lalan, who used to work at a tea shop situated near the office of Vigilance Department, was not produced before the trial court and the evidence of Md. Salim, PW-9, does not appear to be trustworthy.

13. PW- 4 namely, Chandra Kant Jha, who was posted in the FSL Department, Patna, on the post of Technician on 06.07.2021, deposed that in connection with the present case 4 sealed bottles were received in the FSL, out of them, one bottle was in broken condition that was marked as 'A' and the said bottle was empty and according to his evidence the experimental solution was put in the said bottle but the same could not be examined by the FSL department on account of the bottle 'A' being in broken condition and the said witness deposed that examination of the experimental solution was necessary. The said circumstance also goes against the prosecution.

14. In the present matter, the appellant was a public servant at the time of recovery of bribe money from



his possession and he could be removed from his post only with the permission of the State Government, so a prosecution sanction was required to prosecute the appellant for the alleged offences of P.C. Act before initiating the trial of the appellant. But in the present matter the prosecution sanction was initially issued under Section 197 of Cr.P.C. on 02.01.2007 and thereafter the correct and valid prosecution sanction (Ext-8/A) was issued on 28.06.2007 by the law department of the Bihar Government but the same was sent to the trial court on 17.05.2011 while the trial court had taken the cognizance of the alleged offences of the PC Act on 23.08.2007 before the receipt of the modified valid prosecution sanction and between 23.08.2007, the date on which the cognizance was taken, and 02.07.2011, the date on which modified sanction was received in the trial court, three prosecution witnesses had been examined. Hence, the trial court took the cognizance of the alleged offences of P.C. Act against the appellant in the absence of a valid prosecution sanction and thereafter the appellant was subjected to trial and three witnesses were examined by the prosecution in the absence of a valid



prosecution sanction. As such, the entire proceeding before the trial court cannot be deemed to be legal. Accordingly, the important part of the appellant's trial which was done in absence of a valid prosecution sanction can be deemed to be not legal and the said circumstance entitles the appellant to be acquitted of the alleged offences of P.C. Act, 1988.

15. In the light of the circumstances discussed above which go against the prosecution and raise a suspicion in the prosecution's allegation, in my considered opinion the appellant is entitled to get the benefit of doubt and the approach adopted by the convicting trial court in convicting the appellant for the alleged offences does not appear to be proper and legal, hence, the impugned judgment convicting the appellant for the alleged offences and impugned order sentencing the appellant for the said offences are hereby set aside and the instant appeal stands allowed.

16. The appellant is on bail, hence his bail bond as well as the bonds of his sureties stand cancelled and they are discharged from the liabilities arising out of their respective bond.



17. Let the L.C.R. be sent back to the trial court  
forthwith.

**(Shailendra Singh, J)**

Rajiv/-

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	NA .
<b>Uploading Date</b>	
<b>Transmission Date</b>	

