A STATE OF M.P.

v.

HARISHANKAR BHAGWAN PD. TRIPATHI

(Criminal Appeal No. 1513 of 2010)

AUGUST 13, 2010

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[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Prevention of Corruption Act, 1947 – s.5(1)(d) r/w s. 5(2), s.6(1)(c) and s. 161 IPC – Prosecution for demand and C *acceptance of illegal gratification – Of two accused – Complaint for demand of illegal gratification against one accused – Trap arranged – Tainted notes recovered from both the accused – Acquittal by courts below – Appeal before Supreme Court – Appeal against the accused who demanded* D *bribe, abated on account of his death – Held: Possession of tainted currency notes by the respondent-accused has not been explained by the defence – The order granting sanction does not suffer from any infirmity – Matter remitted to trial court for decision on merits — Penal Code, 1860 — s. 161.*

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The respondent-accused, alongwith another accused was tried for offences u/s 161 IPC and s. 5 (1) (d), r/w s. 5 (2) of Prevention of Corruption Act, 1947. The prosecution case was that the other accused demanded illegal gratification from the complainant for issuing him F **an excise licence. The respondent-accused was working as a 'clerk' in that establishment. A trap was arranged on the complaint of the complainant made before the office of Lokayukt. The other accused, after receiving the tainted currency notes from the complainant, gave two** G **of the tainted notes (Rs. 200/-) to the respondent-accused.**

Trial court, though found the trap to have been proved, yet acquitted both the accused on the ground

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that the sanction u/s. 6(1)(c) of the Act, to prosecute the accused had been granted without application of mind. The appeal against the order was dismissed by the High Court on the ground that there was no proper sanction. As regards respondent-accused, the dismissal of the appeal was on the grounds that there was no demand from him and mere recovery of Rs. 200/- from his possession, was not sufficient to hold him guilty. The instant appeal was filed by way of SLP against both the accused. During pendency of the SLP, the accused who had demanded the bribe, died and thus the appeal against him abated. A B C

Allowing the appeal, and remitting the matter to trial court, the Court

HELD: Both the courts below have come to an erroneous finding that although the trap had been proved, the circumstances in which a sum of Rs. 200/- was recovered from the respondent-accused, had not been properly considered. No attempt was made by the defence to explain as to how the tainted currency came to be in the possession of the respondent-accused, except for the statement that the same had been handed over to him by the deceased accused. Unless there was an understanding between the respondent-accused and the deceased accused, there can be no reason for the deceased accused to have given the respondent-accused a part of the money which he had received by way of illegal gratification. [Para 12] [1155-B-D] D E F

2. The reasoning of the trial court as also the High Court in dismissing the case of the prosecution, on the ground that proper sanction was not obtained to prosecute the accused persons, was not correct. The records of the Lokayukt's office had been examined by the Principal Secretary of the State Government, while granting such sanction for prosecution. While granting G H

A **sanction, the officer concerned is not required to indicate that he had personally scrutinized the file and had arrived at the satisfaction for granting sanction. The narration of events granting sanction for prosecution clearly indicates the case and the reason for grant of such sanction. In the** B **instant case, the order granting sanction does not suffer from any infirmity which prompted the courts below to acquit the accused persons. The matter is remitted to the trial court for passing appropriate orders on the merits of the case. [Paras 12 and 13] [1155-E-H; 1156-A-B]**

C *State of Maharahstra vs. Ishwar Piraji Kalpatri and Ors.* **1996 (1) SCC 542 – relied on.**

C.S. Krishnamurthy vs. State of Karnataka **2005 (4) SCC 81 – referred to.**

D **Case Law Reference:**

2005 (4) SCC 81	**Referred to.**	**Para 9**
1996 (1) SCC 542	**Relied on.**	**Para 13**

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1513 of 2010.

From the Judgment & Order dated 31.03.2008 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. F 294 of 1994.

Vibha Datta Makhija for the Appellant.

Kuldip Singh for the Respondent.

G The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. This appeal is directed against a judgment of acquittal passed by the First Additional Sessions Judge and Special

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Judge, Shahdol, in Special Case No.5/87, acquitting the Respondents in respect of offences punishable under Section 161 of the Indian Penal Code (I.P.C.) and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, hereinafter referred to as the "1947 Act". A

3. According to the prosecution case, the complainant, Ramavtar, submitted an application in the Office of the District Excise Officer, Shahdol, for a licence to collect Mahua. At that time, Ghanshyamdas @ G.D. Sharma had been serving as Special Inspector, Excise and the sole Respondent herein, Harishankar Bhagwan Pd. Tripathi, was serving as a Clerk in the said establishment. The complainant, Ramavtar, claimed to have deposited a sum of Rs.200/- for the licence fee in the State Bank and upon inquiry from the said Ghanshyamdas, he allegedly demanded a sum of Rs.2000/- from the complainant as illegal gratification for getting the licence. Eventually, a written complaint was made by Ramavtar to the Lokayukt (Rewa) of the Special Police, Rewa, which was received by the Deputy Superintendent of Police on 04.06.1986. B C D

4. At this juncture, it may be noted that Ghanshyamdas, who had been made the Respondent No.1 in the Special Leave Petition, died during the pendency of the petition and the proceedings against him have, therefore, abated. E

5. Once the written complaint was made, the Office of the Special Police Establishment arranged for a trap and 20 currency notes of Rs.100/- denomination each were treated with phenolphthalein powder and were kept in the right pocket of the kurta worn by Ramavtar. He was directed to hand over the treated currency notes to Ghanshyamdas and was also cautioned against touching the currency notes before they were handed over to Ghanshyamdas. F G

6. According to the prosecution case, the notes in question were handed over by the complainant, Ramavtar, to H

A Ghanshyamdas, who kept 18 of the notes with himself, while giving two of the notes to the sole Respondent, Harishankar. Immediately thereafter, on being given a pre-arranged signal, the trap party came inside and apprehended both the Respondents. Their hands were washed with a solution of
B Sodium Carbonate, upon which the water turned pink in colour. A charge-sheet was submitted before the Special Judge, who, after going through the charge-sheet, framed charges against the accused punishable under Section 161 I.P.C. and also Section 5(1)(d) read with Section 5(2) of the Prevention of
C Corruption Act, 1947. The trial Judge acquitted the Respondents not on the ground that the prosecution had failed to prove its case, but upon holding that the sanction which had been accorded for the prosecution of the accused, was improper and had been given without application of mind. Though, the learned Special Judge found the trap to have been
D proved, he acquitted the Respondents on the ground that the sanction to prosecute the accused had been granted without application of mind.

7. Aggrieved by the judgment of acquittal passed by the
E learned Special Judge, the prosecuting agencies filed Criminal Appeal No.294 of 1994 before the Jabalpur Bench of the Madhya Pradesh High Court, which, by its judgment and order dated 31st March, 2008, reiterated the findings of the trial Court and dismissed the appeal upon holding that the sanction
F accorded by the State Government under Section 6 of the Act suffered from non-application of mind, since in the sanction order only the facts of the prosecution case had been mentioned and no reason had been given for according sanction in regard thereto. In the absence of a valid sanction, the High Court
G dropped the proceedings against Ghanshyamdas, against whom the appeal has abated. As far as the sole Respondent, Harishankar Bhagwan Prasad Tripathi, is concerned, the High Court held that in the absence of any demand made by the said Respondent, the provisions of Section 5(1)(d) of the 1947 Act

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were not attracted and even the recovery of Rs.200/- from Harishankar was not sufficient to hold him guilty of the charges levelled against him. The High Court, accordingly, dismissed the appeal as against the sole Respondent, Harishankar.

8. Ms. Vibha Datta Makhija, learned Advocate appearing for the Appellant, State of Madhya Pradesh, took us to the order dated 9th February, 1987, according sanction under Section 6(1)(c) of the Prevention of Corruption Act, 1947, to initiate prosecution against Ghanshyamdas and Harishankar for the offences punishable under Section 161 I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, and the other Acts for the time being in force in this connection. Learned counsel pointed out that the facts of the case, as would appear from the records maintained by the Office of the Lokayukt, had been clearly set out and a satisfaction was also arrived at from the facts as recorded and from the perusal thereof, that prosecution was required to be initiated against both the accused in a Court of law. Ms. Makhija submitted that the trial Court had wrongly held that no valid sanction for prosecution had been proved, inasmuch as, the same was proved by Shri R.N. Singh, the Superintendent of Police, Lokayukt Office (PW-5). Ms. Makhija submitted that the learned Courts below had erred in acquitting the Respondents only on the said ground after having found them to be guilty of the offence with which they had been charged.

9. Placing reliance on the judgment of this Court in *State of Maharashtra vs. Ishwar Piraji Kalpatri & Ors.* [(1996) 1 SCC 542], Ms. Makhija submitted that this Court had held that while according sanction there was nothing in law which required a statement to be made by the Sanctioning Officer that he had personally scrutinized the file and had arrived at the required satisfaction. The statement made by the Sanctioning Authority that it had fully examined the material before it and after considering all the facts and circumstances discussed therein

A was satisfied that a prima facie case was made out against the accused person and that it was necessary in the interest of justice to prosecute him in the Court, indicated that the material on record had been examined by the officer concerned who had applied his mind before according sanction. B Reference was also made to the decision of this Court in *C.S. Krishnamurthy vs. State of Karnataka* [(2005) 4 SCC 81], where in a similar situation where grant of sanction had been questioned, this Court held that the sanction order should speak for itself and in case the facts do not so appear, it must be C proved by leading evidence that all the particulars were placed before the Sanctioning Authority for due application of mind. If the sanction order itself is eloquent enough, then in that case only formal evidence has to be led by the Sanctioning Authority or any other evidence to prove that the sanction had been D accorded by a competent person upon due application of mind.

10. Ms. Makhija submitted that having regard to the above, the sanction order was sufficiently clear to indicate that the Sanctioning Authority had applied its mind to the records of the office of the Lokayukt while granting sanction for prosecuting E the two accused persons.

11. In view of the death of the Respondent No.1, Ghanshyamdas, during the pendency of the appeal, Ms. Makhija's submissions were opposed on behalf of the F remaining Respondent, Harishankar Bhagwan Prasad Tripathi, and the submissions made before the trial Court as well as the High Court, were reiterated by Mr. Kuldip Singh, learned Advocate. In addition, it was once again emphasized that the sole Respondent had not made any demand for illegal G gratification, nor was any evidence led by the prosecution to make out such a case against him. On the other hand, except for the fact that a sum of Rs.200/- from out of the treated notes had been recovered from his possession, there is nothing else to indicate that he was in any case involved in the conspiracy to obtain bribe for grant of excise licence. Learned counsel H

urged that in such circumstances, the sole Respondent had been rightly acquitted by the Courts below. A

12. Having carefully considered the submissions made on behalf of the respective parties, we are unable to agree with the reasoning of both the learned Special Judge as also the High Court in dismissing the case of the prosecution on the ground that proper sanction had not been obtained to prosecute the accused persons. Both the Courts have come to an erroneous finding that although the trap which had been laid had been proved, the circumstances in which a sum of Rs.200/- was recovered from the sole Respondent, had not been properly considered. No attempt has been made by the defence to explain as to how the tainted currency came to be in the possession of the sole Respondent, except for the statement that the same had been handed over to him by Ghanshyamdas. Unless there was an understanding between the sole Respondent and Ghanshyamdas, since deceased, there can be no reason for Ghanshyamdas to have given the sole Respondent a part of the money which he had received by way of illegal gratification. B C D

13. Even with regard to the grant of sanction, it is quite clear that the records of the Lokayukt's Office had been examined by the Principal Secretary, Government of Madhya Pradesh, while granting such sanction for prosecution. As has been indicated by this Court in *Ishwar Piraji Kalpatri's* case (supra), while granting sanction the officer concerned is not required to indicate that he had personally scrutinized the file and had arrived at the satisfaction for granting sanction. The narration of events granting sanction for prosecution clearly indicates the case and the reason for grant of such sanction. In the present case also the order granting sanction does not, in our view, suffer from any infirmity which prompted the Courts below to acquit the accused persons. E F G

14. This appeal, accordingly, succeeds. The order of the H

A learned Special Judge, Shahdol, dated 19th May, 1993 in Special Case No. No.5/87, acquitting the accused of the charges framed against them under Section 161 I.P.C. and Section 5(1)(d) read with Section 5(2) of the 1947 Act and the judgment of the Madhya Pradesh High Court dated 31st March,
B 2008 in Criminal Appeal No.294 of 1994 are hereby set aside. The appeal is, therefore, allowed and the matter is remitted to the learned Special Judge, Shahdol, for passing appropriate orders on the merits of the case.

K.K.T. Appeal allowed.