



GAHC010161222009

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./141/2009

SRI JITENDRA NARAYAN ROY
S/O SRI BIRENDRA NARAYAN ROY, R/O MAZGAON, UNDER TEZPUR P.S.
DIST. SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.K K BHATTACHARYYA

Advocate for the Respondent :

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. D. Gogoi, Amicus Curiae.

For the Respondents : Mr. D. Das, Addl. PP

Date of hearing : 31.08.2023

Date of judgment : 31.08.2023



JUDGMENT & ORDER (ORAL)

1. Heard Mr. D. Gogoi, learned Amicus Curiae appearing for the appellant and Mr. D. Das, learned Addl. PP, appearing for the State of Assam.
2. The present appeal is directed against the Judgment and Order dated 04.07.2009 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 36(A) of 2003 convicting the accused/appellant under Section 7 of the Prevention of Corruption Act, 1988 and sentencing him to suffer Rigorous Imprisonment for six months and to pay a fine of Rs. 5,000/- (Five Thousand) and in default Rigorous Imprisonment for another one month.
3. The prosecution case was launched on the basis of an ejahar dated 10.04.2002 filed by the then Deputy Commissioner (D.C.), Sonitpur, Tezpur before the Superintendent of Police, Sonitpur, Tezpur inter alia alleging that on receipt of public complaint, an enquiry was ordered and conducted by Sri. K. J. Hilali, Executive Magistrate, Tezpur into the allegations of taking Rs. 210/- per agent as bribe for release of S. K. Oil by the accused/appellant, Inspector of Food and Civil Supplies. During the enquiry, the accused/appellant had confessed to have taken money from the agents. He had also refunded Rs. 25,370/-. Also the enquiry officer took statements of many agents who admitted to have paid bribe to the accused/appellant for release of S. K. Oil. It is stated that this was a clear-cut case of seeking illegal gratification for personal gain by misusing official position.



4. On receipt of the aforesaid ejahar, the Dhekiajuli Police Station registered a case being Dhekiajuli Police Station Case No. 111/2002 under Section 384 of IPC read with Section 7 of the prevention of Corruption Act, and took up the same for investigation. After completion of investigation, charge sheet was filed under Section 384 IPC read with Section 7 of the P. C. Act, against the accused/appellant.
5. Thereafter, committal court committed the matter to the learned Special Judge, Assam, Guwahati. Charges were framed on 23.11.2004 under Section 7 of the P.C. Act, against the appellant and was read over and explained to the accused/appellant, to which he pleaded not to be guilty and claimed to be tried. Accordingly, the trial commenced.
6. To bring home the charges, the prosecution examined as many as 33 witnesses along with certain exhibits; no defence evidence has been adduced on behalf of the appellant. The statement of the accused was recorded under section 313 Cr.P.C.
7. Thereafter, the learned trial Court convicted the accused/appellant under Section 7 of the Prevention of Corruption Act, 1988 and sentenced him to suffer Rigorous Imprisonment for six months and to pay a fine of Rs. 5,000/- (Five Thousand) and in default Rigorous Imprisonment for another one month. Assailing such judgment and conviction, the present criminal appeal is filed.
8. On the basis of the aforesaid evidence, the learned trial court concluded that the appellants are guilty of the offences and accordingly, pass the impugned judgment as discussed herein above. Before determining the legality and validity of such conviction, let this Court now examine the depositions of PW-15, PW-16, PW-18 and PW-24, who are the

star witnesses of the prosecution on the basis of which the conviction and sentence was passed so as to arrive at a just and fair decision.

9. The alleged offence was committed on 04.02.2002 and at that relevant point of time, pre-amended Section 7 of the Prevention of Corruption Act, 1988 was in existence which was amended in the year 2018. In terms of the aforesaid provision to constitute an offence under Section 7 of the Prevention of Corruption Act, 1988 the following conditions are necessary.

- I. The accused must be a public servant.
- II. Said public servant or expected to be a public servant, accept /obtains or agrees to accept or attempts to do the aforesaid act, for himself or any other persons for any gratification.
- III. Such gratification is not a legal remuneration.
- IV. There must be a motive or reward for doing or forbearing to do any official act for attempt to render any service or disservice to any person.
- V. The motive or reward of doing means a person who receives the gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has done something which he is not entitled or not under authority to do, but has done for the illegal gratification.

10. That being the position, now let this Court examine the witnesses whether there are any demand of illegal gratification, if there is demand, whether the motive of such demand was to do something which the accused/appellant was not in a position to do. The star witnesses for the prosecutions are PW-15, PW-16, PW-18 and PW-24 who are supposedly agent of public distributor of kerosene oil.



I. PW-15, Sri Rabi Ram Basumatari, during his examination-in-chief stated that accused/appellant demanded Rs. 200/- from him and he paid only Rs. 100/-.

The cross-examination was not at all relevant for the purpose of determination of the present offence, however, one important aspect of the matter is that according to the PW-15, in the Office, he also met Assistant Supply Inspector and one Clerk Pabitra Baruah.

From the testimony of the PW-15, though a statement is made that the accused/appellant demanded Rs. 200/- and he paid only Rs. 100/- nothing is discernible why such amount was demanded or what are the motive of having the reward or to receive the gratification.

During Cross-examination, though a statement was made that the he could not produced his license and other documents, however, it is not the case that the demand was made for some illegal gratification is that he was allowed to quota of S.K.Oil without having the license and for that the aforesaid 200/- rupees was demanded.

II. PW-16 is another agent. He also stated during examination-in-chief that the Supply Inspector demanded Rs. 210/- from him and accordingly, he paid Rs. 210//- but he has not deposed what was the reason/motive for demanding such money by the accused.

He also proved the Exhibit 19 and 20 i.e. Seizure Memo and his



signature as Exhibit 19(1) and 20(1). The Exhibit 3 and 4 were the coupon for Rs. 10/- bearing SL No. 142 and 146 respectively of donation relating to Bihu function.

The other witness i.e. PW-2 also deposed that the depot asked the agent to go to the Supply office where the petitioner demanded Rs. 200/- with another Rs.10/- for Bihu donation. Accordingly, the payment was made. The Exhibit 21 is a complaint filed by as many as 27 persons before the Deputy Commissioner which reflects that the accused demanded Rs. 10/- as Bihu donation and issued receipts but he has taken Rs. 210/-. It was also alleged that the said Inspector demanded that if such payment is not made, they will not allowed to lift their quota oil.

III. PW-18, Sri Jitesh Kr. Ganguli, who was running the business of S. K. Oil agency during his examination-in-chief deposed that on 05.04.2002, he went to lift the S. K. Oil from Lalchand Nagamal oil depot. He further deposed that the Inspector Jitendra Roy told him to pay Rs. 200/- with another Rs. 10/- as Bihu donation. Accordingly, payment was made. During cross-examination stated that he did not meet police nor did the police come to him nor did he give before the police his name.

IV. PW-24 Sri Waijul Rahman who was the S.K. Agent during his examination-in-chief deposed that he met the supply inspector to pay a sum of Rs. 210/- as bihu donation and



accordingly, the amount was paid and a receipt was issued to him for Rs. 10/-.

During cross-examination, he deposed that he was not an agent of S.K. Oil and he had no licence or any other documents to show that he was an agent and as such, he had no authority or power to lift the S. K. Oil from the Supply Department and neither he had got authority or power to go to the Civil Supply Department and meet the Supply Inspector about lifting of S.K.Oil.

11. This Court has given anxious consideration to the submissions made by the learned counsels for the parties. Also perused the materials available on record.

12. If we look into the evidence of this PWs, nobody has deposed that there was any threat from the accused that until and unless the aforesaid Bihu donation of Rs. 210/- was given, their quota of oil shall not be released. What all these witnesses said is that Rs. 210/- was demanded and somebody paid Rs. 100/- and others paid Rs. 210/-. None of the prosecution witnesses stated that there was any threat from the accused that until and unless the demand of Rs. 210/- is given, they will not be allowed to lift their kerosene or that the aforesaid amount was demanded to give some service or to refrain from giving some disservice to the petitioner which is otherwise not legally permissible.

13. It is not a case of any of the witnesses that such gratification was demanded in respect of any official act rather the exhibit-21, on the basis of which the prosecution was launched and the FIR was lodged reflects that there is no whisper of demand of any gratification in respect of an official work rather it was a demand as Bihu donation.



14. Law is by now well settled that to convict a person under Section 7 of the Prevention of Corruption Act, 1988, the proof of demand and resultant acceptance is sine-qua-non. However, as discussed hereinabove, though there is an allegation of demand but such demand in view of the testimonies of the witnesses as discussed hereinabove, don't disclose that such demand was made or such gratification was sought in respect of any official work to favour or to render any service or disservice to the PWs by the accused, which otherwise not legally permissible.

15. In view of the aforesaid, this Court is of the considered opinion that the learned trial Court had fell into error while concluding that there was demand for illegal gratification and resultant acceptance. Accordingly, the present appeal is allowed by setting and quashing the impugned Judgment and Order dated 04.07.2009 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 36(A) of 2003 convicting the accused/appellant under Section 7 of the Prevention of Corruption Act, 1988 and sentencing him to suffer Rigorous Imprisonment for six months and to pay a fine of Rs. 5,000/- (Five Thousand) in default Rigorous Imprisonment for another one month.

16. While parting with the record, this Court expresses its appreciation to Mr. Gogoi, learned Amicus Curiae for his able assistance. Registry shall pay the remuneration to him as per the present norm. LCR be returned back. The appellant shall be put on liberty forthwith. Bail bond stands discharged.

J U D G E

Comparing Assistant