

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
MRUTUNJAYA PANDA

DATE OF JUDGMENT: 13/01/1998

BENCH:
M.K. MUKHERJEE, S.P. KURKUKAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 13TH DAY OF JANUARY, 1998

Present:

Hon'ble Mr. Justice M.K.Mukherjee
Hon'ble Mr. Justice S.P.Kurdukar
Hon'ble Mr. Justice K.T.Thomas

Mr. Manish Mishra and Mr. P.N. Mishra, Advocates for the appellant.
Mr. N.P.Midha and Mr. Bharat Sangal, Advocates for the respondent.

J U D G M E N T

The following Judgment of the Court was delivered:
M.K.MUKHERJEE, J.

The respondent was tried for and convicted of the offences under Section 161 of the Indian Penal Code and 5(2) read with 5(1) (d) of the Prevention of Corruption Act, 1947 by the Special Judge (Vigilance), Sambalpur for accepting a sum of Rs. 500/- as illegal gratification from Mohd. Ushaman (P.W.2), an employee of Rourkela Steel Plant. In appeal preferred by him the High Court that the respondent received the above sum as illegal gratification and that the defence of the respondent received the above sum as illegal gratification and that the defence of the respondent that the above amount was paid by P.W.2 as loan was unbelievable. In spite thereof the High Court set aside the convictions of the respondent solely on the ground that there was no valid sanction to prosecute him. The above judgment is under challenge in this appeal.

2. On perusal of the impugned judgment we find that the High Court's attention was not drawn to the provisions of Section 465 of the Code of Criminal Procedure which expressly lays down, inter alia, that any error of irregularity in any sanction for the prosecution shall not be a ground for reversing an order of conviction by the appellate Court unless in the opinion of that Court a failure of justice has in fact been occasioned thereby. The section further lays down that in determining whether any error or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage of the proceedings. In

view of the above provisions the High Court was required to decide, after recording a finding that there was some error or irregularity occasioned a failure of justice and further whether such objection regarding the validity of the sanction was raised in the trial Court. Admittedly, the above point was not raised in the trial Court nor do we find anything on record from which it can be said that the error or irregularity in the sanction (even if we assume that the finding of the High Court in this regard is correct) did occasion any failure of justice. In that view of the matter it must be said that the High Court was not at all justified in acquitting the respondent on the ground that there was no valid sanction to prosecute him. Since on facts, the concurrent findings of the Courts below are based on proper appreciation of evidence and supported by cogent reasons the judgment of the High Court has got to be reversed.

3. Resultantly, we allow this appeal, set aside the impugned judgment and restore the conviction and sentence recorded against the respondent by the trial Court. The trial Court will now take appropriate steps to incarcerate the respondent to serve out the sentence imposed by it.