

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.587 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the Accused Officer(AO) aggrieved by the judgment dated 06.04.2006 in C.C.No.11 of 2002 passed by learned Special Judge for SPE & ACB Cases, Nellore convicting him for the offences under Section 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 (for short "P.C Act") and sentencing him to undergo S.I for a period of **one year** and to pay a fine of **Rs.1,000/-** and in default to suffer SI for **one month**. The Trial Court acquitted the AO for the offence under Section 7 of P.C. Act.

2) The factual matrix of the case is thus:

a) AO—Sandipudi Krishnaiah worked as Junior Lineman, APSEB, Nancharampet, Chillakur Mandal, Nellore District during 1996. According to prosecution, Giddaluru Audi Narayana (PW1) who is resident of Potupalem Village, Gudur Mandal, Nellore District had no electricity connection to his house, requested the AO to provide service connection to his house. Then the AO demanded and obtained Rs.300/- from PW.1 in the first instance to provide service connection to his house. Again the AO went to PW.1 and asked him to pay Rs.200/- for service connection and PW.1 paid Rs.200/- to the AO. But the AO did not provide service connection to PW.1. On 24.09.1997, the AO presented a report to PW.7 that he was

assaulted by PW.1. Then PW.7 and the Line Inspector went to the village and found that PW.1 was tapping electricity illegally from the overhead lines, they seized the wire and prepared two reports, one is for assaulting the AO and the another is for pilferage of energy illegally against PW.1. A case was registered against PW.1 under Sections 353 and 355 IPC in C.C.No.331 of 1997 on the file of Judicial First Class Magistrate, Gudur and after full trial, PW.1 was acquitted. The AO, who was examined as PW.1 in C.C.No.331 of 1997 admitted in the cross-examination that G.Audi Narayana (PW1 herein) gave Rs.500/- to him and out of Rs.500/- receipt will be given for Rs.250/- and for the rest of the amount, no receipt will be given but it is spent for office expenses. AO further admitted that he did not obtain D.D for the necessary amount to obtain new connection, he kept the money with him and did not inform his Engineer and as on 29.08.2000, the money was still with him and he did not handover the money to AE. It is clarified before the Judicial First Class Magistrate that AO used to collect the money @ Rs.500/- for giving service connection and that AO did not obtain any application from PW.1 and that he is aware that he is not entitled to take the money from the customer for providing service connection.

b) PW.3—Sri G.Venkata Krishnaiah, J.F.C.M, Gudur forwarded the deposition of AO (Ex.P.2) to the PW.9—Inspector, ACB, Nellore with a covering letter (Ex.P.1) for taking necessary action. On receipt of Exs.P.1 and P.2 from PW.3,

PW.9 sent a report to the D.G, ACB seeking instructions and the D.G, ACB issued Ex.P.5—memo dated 07.12.2000 with an instruction to PW.9 to register a case of Criminal Misconduct under relevant provisions of law against AO, conduct investigation and send final report. Accordingly, PW.9 registered a case in Cr.No.20/ACB-NLR/2000 dated 29.08.2000, conducted investigation and sent final report to D.G, ACB, and after receipt of Ex.P.4—sanction order, he filed charge sheet against the AO.

c) The Trial Court took cognizance against AO under Sections 13(2) r/w 13(1) (c) and (d) of P.C. Act.

d) On appearance of AO, charges under Sections 7 and 13(2) r/w (1) (c) & (d) of P.C. Act were framed against him and trial was conducted.

e) During trial, PWs.1 to 9 were examined and Exs.P1 to P6 were marked on behalf of prosecution. D.W.1 was examined on behalf of defence.

f) The trial Court on appreciation of evidence having found the AO guilty of the charge under Section 13(2) r/w 13(1) (c) &(d) of P.C. Act, convicted and sentenced him as stated supra. The Trial Court acquitted the AO for the offence under Section 7 of P.C. Act.

Hence, the appeal by AO.

3) Heard arguments of Sri A.Hari Prasad Reddy, learned

counsel representing for Smt. D. Sangeetha Reddy, learned counsel for appellant/AO and Sri M.B.Thimma Reddy, learned Special Public Prosecutor (Spl.P.P.) for ACB cases.

4 a) Fulminating the judgment, learned counsel for appellant/AO firstly argued that the trial Court totally misread the evidence touching the conduct of AO in receiving Rs.500/- from PW.1 and erroneously held as if he committed the act of misconduct. He argued that the trial Court erred in believing the evidence of PW.1 in this regard forgetting the fact that he is inimically disposed of towards AO. He argued that the circumstances under which AO received amount from PW.1 and kept with him and the reason for not returning the amount were cogently explained by AO and therefore, from mere non-refunding of the amount, no dishonest intention can be inferred from acts and he cannot be held guilty of the act of misconduct. Learned counsel further submitted that the AO is a deaf and a rustic and PWs.2 and 4 have extracted some incriminating answers from him during his evidence and they cannot be used against him.

b) Secondly and alternatively he argued that if the Court ultimately comes to conclusion that accused was guilty, lenience may be shown in awarding sentence having regard to the facts and circumstances of the case.

5) Per contra, while supporting the judgment, learned Special Public Prosecutor argued that admittedly the AO

received Rs.500/- from PW.1 on the pretext of providing electricity connection to his house without receiving application from him and he has not informed the fact of collecting amount from PW.1 to his higher authorities and he has not applied for D.D towards meter charges and he has not returned the amount even on the date of his examination in Court and all these acts would cumulatively and unerringly point out his guilt and there are no merits in the appeal and hence the appeal may be dismissed.

6) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

7) **POINT**: As can be seen from the facts, the alleged guilt of the AO was found out in Ex.P.2—deposition given by him in C.C.No.331 of 1997 before the PW.3—the learned Judicial First Class Magistrate, Guduru. The present AO was the *defacto* complainant in C.C.No.331 of 1997. He gave the deposition in the background of the facts that PW.1 in the present case i.e, Giddaluru Adi Narayana, who was a resident of Potupalem Village, Gudur Mandal had no electricity connection to his house during 1996 and so he approached the present AO who was working as Junior Lineman, APSEB, Nancharampet, Chillakur Mandal, Nellore, who was also incharge for Potupalem village and requested AO to provide service connection to his house and on the demand of AO he paid

Rs.300/- on one occasion and Rs.200/- on another occasion. AO did not provide service connection to PW.1. When the matter stood thus on 24.09.1997, the AO presented a report to PW.7—Sanjay Kumar, the-then Assistant Engineer reporting that he was assaulted by PW.1. Thereupon PW.7 and Line Inspector went to the village and found that PW.1 was tapping electricity illegally from the overhead lines and so they seized the wire and prepared two reports, one for assaulting the AO and another for tapping power illegally by PW.1. A case was registered against PW.1 under Sec. 353 and 355 IPC in C.C.No.331 of 1997. The present AO was PW.1 in that case and the prosecution was conducted by PW.2—Senior Assistant Public Prosecutor in the JFCM Court, Gudur. The present PW.1 who was the accused therein was defended by PW.4—Sri Vijaya Rama Raju. After full trial, PW.1 was acquitted. It was during the trial of said case, AO (PW.1 in C.C.No.331 of 1997) made certain revelations before the trial Judge about his receiving Rs.500/- and retaining the same with him and so PW.3—the trial Judge put some questions to him and got clarification in that regard. Having felt that the narration made by AO (PW.1 in C.C.No.331 of 1997) amounts to misconduct, PW.3 addressed Ex.P.1—letter to the Inspector, Nellore enclosing Ex.P.2—copy of deposition of AO (PW.1 in C.C.No.331 of 1997).

a) The relevant portion in Ex.P.2 is important and hence extracted thus:

“Cross-examination by Sri M.V.R.R: x x x x

It is true that accused gave money to me to obtain new connection one month prior to the date of offence. Accused gave me Rs.500/- out of Rs.500/- receipt will be given for Rs.250/- and rest of the amount no receipt will be given but it is spent for office expenses. I did not obtain demand draft for the necessary amount to obtain new connection, I kept the money for about 10 days without obtaining demand draft on behalf of accused. I did not inform our Engineer, that I took Rs.500/- from the accused. The amount of Rs.500/- is still with me. Accused is still residing in the village. Because accused did not meet me I did not return to him. I did not handover money to AE. It is not true to suggest that I foisted false case against accused because he demanded me to provide service connection. It is not true to suggest that accused never pilfered electricity and foisted a false case because accused demanded some action for the payment of Rs.500/-.

By Court: *I used to collect money for giving service connection and provide service connection. I used to collect at the rate of Rs.500/- for connection. I did not obtain any application from the accused. I know that I am not entitled to take money from the customer for providing service connection. At present no amount is collected for office expenses to provide new service connection.”*

b) Thus from the above deposition of AO, it is clear that he received Rs.500/- from PW.1. Though he deposed that receipt will be given for Rs.250/-, he did not issue the receipt and he did not inform the fact of his receiving Rs.500/- to the higher authorities. He stated that the rest of Rs.250/- will be spent for office expenses but he could not substantiate what type of office expenditure it is and whether the said expenditure is legally approved one or not and most importantly, whether he

was authorised to collect the amount. On the other hand, during the examination by Court he admitted that he knows that he is not entitled to take money from the customer for providing service connection. Admittedly the amount was lying with him even by the date of his deposition. Therefore, the act of the AO unauthorisedly receiving the amount in the capacity of a public servant from a consumer and converting it for his own use without returning the same will amount to misconduct on his part. Having made admission of receiving the amount as stated supra, the AO tried to paint a different picture as to the purpose for which he received the amount. During the cross, he gave certain suggestions to PW.1 which reveal the line of his defence.

“Cross-examination by Sri P.V.K.R: xx xx xx

“It is not true to suggest that the AO was my good friend from the year 1990. It is not true to suggest that I approached the AO with a request to help me in getting electrical connection to my house, when he said that I have to pay around Rs.250/- to Rs.300/- to the Government towards meter charges and I have to produce no due certificate from the Gram Panchayat and also ownership certificate of the house and other connected documents. It is not true to suggest that I informed him that I was busy since I had to attend my work at Nellore and I requested him as my friend to enquire about the said certificates and help me in getting the said certificates, and that he enquired the Panchayat and found that I was due to pay house tax to the Government about Rs.200/- towards house tax and unless the house tax is paid, they refused to give no due certificate and ownership certificate of the house and that the AO informed the same to me. It is not true to suggest that the AO asked to go and pay the arrears of tax and obtain certificate and I requested him to pay the tax and get

the required certificates. It is not true to suggest that the Panchayat people told him when he approached them that I have to pay about Rs.700/- towards arrears of tax and the prior information furnished was not correct. It is not true to suggest that he could not meet me as I was not available at home for some time, with great difficulty he met me and informed me about the arrears of tax payable to the Panchayat and I expressed my inability to pay the tax. It is not true to suggest that the AO offered to return Rs.500/- since it would be difficult to get electrical connection in the absence of the aforesaid certificates and I asked him to keep the money with him and that I would arrange the amount for payment of tax. It is not true to suggest that I was not working in Narayana College Hostel, Nellore in the year 1996 and I was leading a life of vagabond and used to come to the village once in 20 days or one month.”

c) So as can be seen, his defence was that Rs.300/- was intended for obtaining D.D for meter and remaining Rs.200/- was obtained for paying to the Gram Panchayat towards arrears of the tax and as he came to know later that the arrears of the tax was not Rs.200/- but Rs.700/- and so he wanted to return the total amount of Rs.500/- to PW.1 but he could not meet him. It must be said that the AO did not try to substantiate his defence by summoning the record from Gram Panchayat to show that PW.1 was due of Rs.700/- to Gram Panchayat towards arrears of the house tax. In the absence of such proof and in view of staunch denial of all the defence suggestions, it has to be held that the defence theory is false and the amount was purposefully retained by the AO. The trial Court has comprehensively discussed all the aspects and rightly held that the AO was guilty of the charges under Section 13(2) r/w 13(1)

(c) & (d) of P.C. Act. Accordingly, I find no merits in this Criminal Appeal.

8) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court in C.C.No.11 of 2002. Consequently, appellant/AO is directed to surrender before the trial Court on or before **04.03.2015** and on such surrender, the trial Court shall commit him to jail for serving sentence.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 12.02.2015

Note: L.R. Copy to be marked: Yes / No

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