HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.1533 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the State represented by CBI, Hyderabad against the acquittal of Accused Officer (AO) by the Special Judge for CBI Cases, Hyderabad in his Judgment dated 06.03.2006 in C.C.No.36 of 2002.

2) The matrix of the case which led to file the instant appeal is succinctly thus:

a) The prosecution case is that AO—B.Venkata Swamy while working as Junior Accounts Officer, Finance Section, Fertilizer Corporation of India Limited, Ramagundem committed criminal misconduct by abusing his official position, demanded and accepted Rs.10,000/- from K.N.Ramesh—complainant (PW1) on 24.05.2002 as illegal gratification for passing pending bills of M/s.Swastic Medical Agencies, Godavari Khani to a tune of Rs.1 lakh.

b) It is stated that M.Chandra Mohan, co-partner of complainant, (PW5) contacted SP, CBI, Hyderabad over telephone on 22.05.2002 and informed that some Government servants demanded money from his partner

(PW1). The SP in turn directed Inspector—K.Alwar Swamy (PW11) to go over Ramagundam and verify the genuineness of the complaint and also instructed PW5 and his partner—PW1 to meet the Inspector at NTPC Guest House, Ramagundem. Accordingly, PW11 visited Ramagundam and received Ex.P1—complaint from PW1 on 24.05.2002 and after verifying the genuineness of the complaint sought permission of SP to lay the trap. Thereafter, on the same date i.e. on 24.05.2002 PW11 with the help of two independent mediators—PWs.2 and 4, successfully laid trap on AO and caught him red-handed. After completion of investigation, the Inspector of Police, CBI, Hyderabad (PW9) laid charge sheet against AO under Sections 7 and 13(2) r/w 13(1)(d) of PC Act.

c) During trial, PWs.1 to 11 were examined and Exs.P1 to P27 were marked and MOs.1 to 4 were exhibited on behalf of prosecution. Ex.D1 was marked on behalf of defence.

d) On appreciation of oral and documentary evidence, the trial Court held that prosecution failed to establish the charges levelled against accused and accordingly acquitted him.

Hence the appeal by State.

3) The parties in this appeal are referred as they stood in the trial Court.

4) Heard arguments of Sri P.Kesava Rao, learned Special Public Prosecutor for CBI (Spl.P.P) and Sri P.Giri Krishna, learned counsel for AO.

5a) Severely criticizing the judgment, learned Spl.P.P argued that evidence of PWs.1, 2, 4 and 11 clearly established the vital ingredients of demand and acceptance of bribe by AO and their oral evidence was corroborated by positive result yielded by the chemical test conducted on the hands of AO which demonstrated the acceptance of bribe by AO and the above evidence was not shattered in the cross-examination and in spite of the same, the trial Court gave preference to inconsequential and trivial aspects and further, it gave undue preference to earlier part of chief examination of PW1 rather than his chief examination after recall and similarly, trial Court gave undue importance to minor discrepancies which do not go to the root of the prosecution case at all.

b) Expatiating his arguments, learned SPl.P.P firstly submitted that demand is concerned, the accused had every occasion to demand bribe from PW1 since passing of bills was pending with him and even assuming that long prior to 22.05.2002 bills were already passed but issuance of cheque towards cost of medicines supplied by M/s.Swastic Medical Agencies alone was pending and issuance of cheque was not within the power of AO, still he had an occasion to demand bribe by keeping PW1 and his partners in darkness about passing of the bills. So, mere passing of bills even prior to 22.05.2002 is not a factor to disbelieve the prosecution case. He vehemently argued that PW1 was emphatic in his evidence that AO demanded bribe of Rs.10,000/- to pass the medical bills when he met him on 22.05.2002 and this part of evidence could not be shattered in the cross-examination.

c) Secondly, arguing on further demand and acceptance of bribe, he submitted that as per the instructions of AO only, PWs.1 and 2 went to the his residence on the evening of 24.05.2002 to pay him tainted bribe amount and on his further demand only PW1 handed over the bribe amount to AO which he received with his right hand and counted with his both hands and kept in his left side pant pocket and this aspect was emphatically deposed by PWs.1 and 2 and corroborated by other members of trap like PWs.4 and 11 and above all, the chemical test conducted on the hands of AO also yielded positive result and the AO did not give any spontaneous explanation as to why PWs.1 and 2 have come to his residence if he has not invited them and further, he has not given any explanation for the recovery of amount from his person i.e. his pant pocket and he has not given any suggestion that the money was thrusted in his pocket and all these would manifest that AO has demanded and accepted bribe. However, the trial Court on erroneous and perverse appreciation of facts and evidence, acquitted the AO and therefore, appeal may be allowed and AO may be convicted.

6 a) Per contra, supporting the judgment, learned counsel for respondent/AO argued that prosecution in this case miserably failed to establish the vital ingredients of the offence i.e. demand and acceptance of bribe and prime evidence led by it through PWs.1, 2, 4, 5 and 11 suffered severe setback due to material inconsistencies and discrepancies on vital aspects and therefore, the trial Court rightly rejected prosecution case. Enlarging his argument, demand is concerned, learned counsel argued that the alleged demand of bribe itself is unbelievable for the prime reasons that in respect of passing of same medical bills, PW1 and his partners lodged similar complaint against B.Yadagiri—Deputy Finance Manager,

who is the co-employee of AO and the case was ultimately ended in acquittal and in the said backdrop, it will be highly unbelievable that AO would dare to demand bribe when a case was pending against his co-employee. Learned counsel vehemently argued that even assuming for a moment that AO was a bribe monger, still the fear psychosis would drag him back from demanding bribe. Learned counsel further argued that even if the psychological factor is kept aside, still the other facts would show that AO had no occasion to demand bribe for the reason that long prior to 22.05.2002 i.e. first date of demand, he already passed the bills and submitted to Finance Section for issuing cheque to PW1 and since issuing of cheques was not within his power, there was no occasion for him to demand any bribe. If he was really a bribe monger, he would have withheld the bill. He thus submitted that no official work was pending with AO to demand bribe and in fact, he did not demand bribe either on 22.05.2002 or on 24.05.2002. He further submitted that the theory of demand spoken by PW1 shrouded with much controversy inasmuch as in the chief he stated AO demanded bribe in his presence alone but in the cross-examination, he stated as if demand was made in the presence of his partners. Be that it may, PW5 the partner of PW1, did not support the version of PW1 as he did not spell a word about the alleged demand made by AO.

b) Secondly, further demand and acceptance of bribe are concerned, he argued that there is any amount of variation in the earlier part of chief examination of PW1 and his further chief examination after recall. Pointing out the same, he argued that in his earlier chief examination PW1 did not specifically state that AO demanded him bribe and on such demand he paid the amount. What all he simply stated was that after meeting AO, He (PW1) informed AO that he was paying Rs.10,000/- and requested him (AO) to forward the bills then, AO received the money. Thus, there was no demand by AO for bribe. However, after re-call, SPl.P.P tutored him and this time PW1 stated as if when he enquired AO as to whether he forwarded bills, AO questioned him whether he brought the amount and he affirmed and took out the cash from his left side shirt pocket and gave it to AO and AO received the cash and counted and put in his left side pant pocket. Learned counsel vehemently contended that the above narration was made by PW1 only after his recall and tutored by SPl.P.P and therefore, the demand may not be taken into consideration.

c) Thirdly, denying the acceptance of bribe by AO, learned counsel argued that AO neither demanded nor accepted bribe from PW1 and his hands showed positive result to chemical test because they were caught hold by one Ashok—Constable who originally applied phenolphthalein powder to currency notes during pre-trap proceedings and who has not washed his hands thereafter, therefore, no significance can be attached to chemical test.

d) Fourthly, he argued that MO4—pant does not belong to AO inasmuch as the said pant does not contain front pockets as revealed by PW1, but as per Ex.D1—161 Cr.P.C. statement of PW2 the amount was recovered from the front pocket of AO. He argued that in view of above inconsistencies and other improbabilities in prosecution case, the trial Court rightly rejected its case. He thus prayed to dismiss the appeal.

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

8) *"Whether the judgment of the trial Court is factually and legally sustainable or whether it suffers from perverse appreciation of facts and evidence?*

9 a) **<u>POINT</u>:** It should be noted that in an appeal against the acquittal the Honourable Apex Court in the following judgments has given a caution to the appellate Court that

though the appellate Court has every power to re-appreciate, review and reconsider the evidence at large both on facts and law, but however it must be kept in mind that its interference will be justifiable only when the judgment of the trial Court suffers from perversity in appreciation of evidence but not when there is a mere possibility of appellate Court's coming to a different conclusion basing on the evidence. The Apex Court further observed that the appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though view of the appellate court may be more probable one. The trial Court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses. The Apex Court has also observed that the presumption of innocence which was available to an accused before the trial Court, would be reinforced by the acquittal recorded.

1 . ***Bhaskar Ramappa Madar vs. State of Karnataka***[1]

2. ***Govindaraju @ Govinda vs. State by Sriramapuram P.S.***[2]

3. ***Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra***[3]

Therefore, in the light of above observations of the Apex Court, it has now to be seen whether the judgment of the trial Court is factually and legally sustainable or suffers the vice of defective and perverse appreciation of facts, evidence and law.

b) It being a trap case, needless to emphasise the fact that the prosecution shall by cogent evidence establish the vital ingredients of the offence i.e. demand and acceptance of bribe by AO to establish the charges under Sections 7 and 13(2) r/w 13(1)(d) of PC Act.

10 a) Charge against AO precisely is that on 22.05.2002 when PW1 met AO who was a Junior Accounts Officer in Finance Department of FCI, he demanded bribe of Rs.10,000/- for forwarding the bills of PW1's concern towards supply of medicines to FCI and on 24.05.2002 AO further demanded and accepted Rs.10,000/- at his residence. AO denied demand and acceptance of bribe.

b) Then first ingredient is demand dated 22.05.2002. Before scrutinizing the prosecution evidence on the demand aspect, one admitted fact has to be mentioned here which is relevant and having impact on the aspect of demand. Admittedly, M/s.Swastic Medical Agencies, Godavarikhani was supplying medicines to FCI and it has four partners viz. K.N.Ramesh, Chandra Mohan, Chandrasekhar and Panduranga Chary. PW1 in his cross-examination admitted that one of the partners viz. Chandra Mohan filed a case against B.B.Yadagiri—Deputy Finance Manager, FCI in relation to the same bills and cheques concerned to the instant case and in pursuance of the same, CBI has charge-sheeted him and after full-fledged trial he was acquittal by the Special Judge for CBI cases, Hyderabad. The vehement argument on behalf of AO is that when a superior and colleague officer of AO was charge-sheeted at the instance of partners of PW1 for allegedly demanding bribe relating to the same bills and cheques and was facing trial, the accused would not dare to demand bribe from PW1 for passing of the same bills and hence fallacity of prosecution case is evident from this fact.

c) It should be noted that neither the prosecution nor the accused filed documents giving particulars of the case against B.Yadagiri and it is not known on what grounds he was acquitted. Be that it may, the facts admitted by PW1 are that in respect of passing of same bills and cheques, Chandra Mohan, one of the parties filed a case against B.Yadagiri and CBI charge-sheeted him and he was acquitted after full-fledged trial. In view of this admitted fact, there is some force in the contention on behalf of AO that when a colleague officer was involved in a criminal case in respect of same matter, generally no other employee will dare to solicit bribe from the same set of complainants. Of course, though on this ground alone prosecution case cannot be thrown away, still this aspect has to be kept in mind while weighing the prosecution case.

11 a) Then coming to the demand aspect, as per prosecution, the first demand was made by AO on 22.05.2002. Here, as observed by the trial Court, two important factors weigh against prosecution case. We find an admission by PW1 in the cross that by 22.05.2002 all their bills were passed and cheques have to be prepared by the Finance Department. His further admission was Sri B.Yadagiri—Deputy Finance Manager was competent to sign on cheques. So, this part of his admission throws a reasonable doubt as to whether any official work was in fact pending with AO to demand him bribe. Of course, learned Spl.P.P inimitably presented that in spite of passing bills long back, still there was an occasion for AO to demand bribe from PW1 hiding the said fact. It may be true, but except admitting that by 22.05.2002 all their bills were already passed except

issuing cheques, there is no clarification from PW1 that by 22.05.2002 he was not aware of the said fact and he came to know the same only some time after trap. In the absence of such clarification his admission should be accepted as if he knew this fact on 22.05.2002. So, when the AO has discharged his function by 22.05.2002 and passing of cheques was not within his power, it is unlikely that he would demand bribe for doing work which was not pending with him.

b) Then the second aspect which weigh against the prosecution case is a nebulous fact as to before whom AO laid his demand for bribe. There is any amount of controversy in this regard. As per the chief of PW1, on 22.05.2002 when he met AO he informed that he would forward the bills provided PW1 pay Rs.10,000/- and asked him to meet on 24.05.2002 and then PW1 informed the said fact to his partners but they were not willing to pay bribe. So, they telephoned to CBI office. So, his evidence would suggest an inference that AO demanded bribe from PW1 when he was alone as otherwise the question of PW1 informing the said fact to his partners does not arise. However, in the cross-examination PW1 turned round and stated that on 22.05.2002 he went to AO along with his partners. He further stated that he mentioned in his complaint that his partners were with him when he met AO on 22.05.2002 at the time of demanding money. So, his cross-examination reveals as if AO demanded bribe from PW1 in the presence of his partners. This discrepancy gives rise a doubt as to before whom AO demanded bribe and whether he demanded bribe at all. This doubt further intensifies from the fact that PW5—M.Chandra Mohan who is one of the partners of PW1, did not support either version of PW1 i.e. AO demanding bribe before PW1 alone or before all the partners. Surprisingly, PW5 did not state anything about AO making demand for bribe. His evidence is that they submitted bills for medicines supplied and during 2002 bills were pending for payment from FCI and he approached Sri B.Yadagiri—Deputy Finance Manager for clearing his bills and later he telephoned to SP, CBI, Hyderabad and SP instructed to meet his staff who were coming to Ramagundam Guest House on 24.05.2002. Except that, he did not depose about AO making demand for bribe. So, when the above facts and evidence are cumulatively taken into consideration, the prosecution theory of AO demanding bribe either before PW1 or his partners appears to be quite unbelievable. So, it can be said that prosecution failed to establish the demand aspect.

12) Then, further demand and acceptance of bribe on 24.05.2002 are concerned, we have the evidence of PWs.1 and 2 on this aspect. According to prosecution, as per the instructions of PW11, both PWs.1 and 2 went to the residence of AO at 3.00 PM and on further demand of AO, PW1 paid the tainted bribe amount to him and PW2 came out and gave pre-arranged signal and the trap party rushed to the house of AO and caught him red-handed. Then, the evidence of PW1 is concerned, in earlier part of his chief examination he deposed that himself, PW2 and one Madusudhan proceeded to the house of AO and after meeting him he (PW1) informed that he was paying Rs.10,000/- and requested AO to forward the bills and AO received the money and Madusudhan came out and gave pre-arranged signal and caught the accused. So, in his evidence there is no specific mentioning about AO demanding bribe. Rather it shows PW1 himself offered the amount and AO accepted the same. Be that it may, in his further chief examination after recall, he was made to depose as if when he asked accused whether he forwarded the bills, AO in turn asked him whether he brought the amount and PW1 affirmed and took out the cash from his shirt pocket and gave it to the accused and AO received the cash and counted the same and put in

his left side pant pocket. Thus, there is a clear improvement in the version of PW1 at two different stages. In his latter version, PW1 deposed as if AO demanded him bribe and he paid. Thus, there is a controversy regarding further demand made by AO. Be that it may, when we peruse the evidence of PW2—accompanying witness, he deposed that at about 3.00 PM, PW1 and himself rushed the house of AO and on seeing them AO came out and took them inside the house and offered seats and after mutual reciprocation of greetings, AO started telling that their bills would be cleared so that their burden can be reduced and then PW1 said that he had brought the bribe amount as demanded and gave it to AO who received with his right hand and counted and kept in his left side pant pocket and thereafter this witness came out of the residence and gave pre-arranged signal by wiping out his face. This is the version of PW2 in the chief examination. So, when the earlier part of chief of PW1 and chief of PW2 are conjunctively studied, we find that AO did not demand bribe but PW1 himself offered and he received. It is only in the further chief of PW1, we will find as if AO made further demand for bribe. Hence, a doubt would arise as to whether AO demanded bribe. Due to remarkable improvement in the evidence of PW1 on further demand, it is not safe to rely on his evidence.

Sofaras PW2 is concerned, in the cross-examination certain omissions were pointed out and thereby his evidence also is not free from doubts.

13) Then acceptance of bribe is concerned, again there appears to be some controversy. The prosecution mainly relies upon the chemical test held on the hands of accused and recovery of his pant for proving acceptance of bribe.

a) Chemical test is concerned, the argument of AO was that his hands were held by Constable—Ashok and thereby phenolphthalein powder was transferred to his hands and so chemical test has no sanctity. On this aspect, PW1 did not specifically state which member of the trap team caught hold the hands of AO. However, PW2 has stated that on the instructions of PW11, Mr. Ashok—Constable caught hold the hands of the accused at wrist points and thereafter PW11 instructed Prabanjan Rao to prepare Sodium Carbonate Solution and subjected the fingers of both hands of AO to chemical test. PW2 in his earlier part of chief examination stated that during pre-trap proceedings when PW1 produced bribe amount of Rs.10,000/-, PW11—TLO asked the very same Ashok to apply phenolphthalein powder on the currency notes and he obliged. So, from his evidence it is evident that Constable—Ashok who smeared phenolphthalein powder on the currency notes during pre-trap proceedings had followed the trap team to the residence of AO. He in fact caught hold the wrists of AO on the instructions of PW11. At this juncture, as rightly observed by the trial Court, PW2 has not specifically stated that Ashok has cleansed his hands after applying phenolphthalein powder on the currency notes. Therefore, there is no positive evidence forthcoming from PW2 that Ashok has washed his hands before joining the trap team. No doubt, PW11 in his evidence has inimitably deposed as if he has given instructions to all the team members including himself to thoroughly wash the hands before proceeding further and all the team members including himself and complainant washed their hands. However, how far the evidence of PW11 is believable is the question. It should be noted that PW11 in his chief examination did not mention the name of the Constable whom he instructed to apply phenolphthalein powder on the currency notes but he only stated that he instructed one of the Constables. So, from the evidence of PW11 it is not clear which Constable had applied phenolphthalein powder on the currency notes. Therefore, obviously the evidence of PW2 has to be accepted which means Constable—Ashok applied phenolphthalein powder on the currency notes. However, PW2 the independent witness did not say that Ashok has washed his hands. When the said person held the hands of AO without cleaning his hands, the chances of transferring phenolphthalein powder to the hands of AO cannot be ruled out. So, now no significance can be attached to the chemical test.

14) Then, MO4—pant of the accused is concerned, as per PW1, the accused after receiving the bribe amount kept it in his pant which is MO4. PW2 also stated that MO4 is the pant of the accused. As per Ex.D1—161 Cr.P.C. statement of PW2, the AO kept the bribe amount bundle in his left side front pant pocket. The trial Court observed that MO4 does not have any front pockets as stated by PW2 in Ex.D1. If Ex.D1 were taken into consideration, MO4 was not the pant of the accused. There is no proper clarification from prosecution side in this regard. Therefore, whether AO wore MO4 and kept the tainted money in the said pant pocket is a doubtful aspect. So, further demand and acceptance of bribe amount are concerned, the prosecution evidence is shrouded with many inconsistencies and improbabilities. As rightly observed by the trial Court, neither demand nor acceptance is satisfactorily proved by the prosecution in

this case. It may apparently appear that PW1 and his partners have no animosity or motive to implicate AO in a false case. But at the same time, it cannot be forgotten that they have filed a case against B.Yadagiri—Deputy Finance Manager on similar facts which was ended in acquittal.

15) So, on a conspectus of facts and evidence, it must be held that accused deserves benefit of doubt since prosecution could not prove its case beyond all reasonable doubt. The appreciation of facts and evidence by the trial cannot be carped.

16) In the result, this Criminal Appeal is dismissed by confirming the judgment of the trial Court in C.C.No.36 of 2002.

U.DURGA PRASAD RAO, J

Date: 02.07.2015

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

Murthy

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[1] 2009 (1) ALD (Crl.) 773 (SC)

[2] AIR 2012 SC 1292

[3] (2010) 13 SCC 657