

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1431 OF 2006

JUDGMENT:

The present Criminal Revision Case is preferred by the appellant - accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), challenging the judgment, dated 15.11.2005, passed by the Sessions Judge, Nellore, in Criminal Appeal No.153 of 2002, confirming the conviction recorded under Section 255 (2) of the Code and the sentence to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for one month inflicted by the learned Judicial Magistrate of First Class, Venkatagiri, Nellore District on 03.09.2002 in C.C. No.158 of 1999, for the offence punishable under Section 171-E IPC.

2. Heard Sri M. Venkatanarayana, learned counsel for the revision petitioner - accused, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. The main submission made by the learned counsel for the revision petitioner has been, that he is implicated and he was never indulged in distributing the amount to the Voters in the election that was scheduled to take place on the next day, and that he was taking the amount of Rs.35,000/- from Vidyanagar to Tirupati via Venkatagiri for clearing the house loan. According to the learned counsel, the police party, which alleged to have surprised the accused

at the place of occurrence, did not procure any independent witnesses to record the confessional statement that alleged to have led to recovery of the amount. Therefore, it is his submission that the so-called confessional statement and recovery is hit by Section 25 of the Indian Evidence Act, 1872, which inlays the bar to treat it as relevant fact. It is also his submission that the ingredients of Section 171-E of IPC are not satisfied in the present case. There was no attempt by the revision petitioner, nor he was distributing the amount to the voters, and mere possession of money would not lead to inference or presumption that it was intended to be given to the voters in the ensuing elections for casting the votes in favour of a party.

4. Perused the judgment passed by the learned Magistrate as well as the learned Sessions Judge.

5. The learned Magistrate, somehow, went wrong in referring to Section 161 of IPC borrowing the definition of 'bribery' though, the said provision was repealed by the amended Act of 1988 when the Prevention of Corruption Act, 1947 was amended in 1988 taking out the definition of 'bribery' from IPC and bringing it into the Prevention of Corruption Act. So far as Section 171-E IPC punishment for bribe is concerned, it provides that whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Just basing on the recovery of the amount of Rs.35,000/- which is marked as

MO.1, and observing that the judgment of the Hon'ble Supreme Court in 1990 SCC (Crl.) 513, helps the prosecution case without extracting or referring to the legal proposition laid down therein, recorded conviction. In fact, the learned Magistrate did not refer to the weaknesses in the prosecution case and as to why the police party was unable to secure the independent witnesses for the alleged seizure of the amount by conducting or holding a *panchanama*. Equally, the learned Sessions Judge failed to deliberate on such vital issue. In such an event, certainly, the conviction recorded is not sustainable and liable to be set aside.

6. Accordingly, the conviction recorded and fine of Rs.2,000/- imposed by the learned Magistrate as affirmed by the learned Sessions Judge for the offence punishable under Section 171-E IPC are hereby set aside, by allowing the present Criminal Revision Case.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

November 29, 2017.

Mgr