

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL Nos.416 AND 447 OF 2007

COMMON JUDGMENT:

These appeals are preferred, by the appellants, who are A1 and A2 respectively, aggrieved by the Judgment, dated 30.03.2007, passed in C.C.No.21 of 2002 by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, by virtue of which the trial court convicted A1 and A2 for the offence punishable under Section 7 and 13(1)(d) of the Prevention of Corruption Act, and were sentenced to undergo Rigorous Imprisonment for a period of one year each and also to pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for a period of one month each.

2. The facts of the case, briefly, as per the charge sheet, are as follows:

A1 worked as Assistant Engineer (Panchayat Raj) Parkal Mandal and incharge of Chityal mandal of Warangal District, from 24.08.1990 to 07.07.2000 and A2 worked as Deputy Executive Engineer, Panchayat Raj, Parkal Mandal, Warangal District and they are public servants. The complainant, being a contractor, was entrusted with road formation work from Garimallapally village to Boinapally village, Chityal mandal i.e., one kilometre distance, with an estimated cost of Rs.2,00,000/- under 50% Sramadanam. As such, the complainant completed the earth work in the moth of February, 2000 and gravel work in the month of May, 2000 and requested A1 and A2 to record the

same in the measurement book. He approached A1, who was in charge of Chityal Mandal, and A2 for several times. But they have been prolonging the matter. On 17.06.2000, the complainant met A1 for the same work and he in turn informed the complainant that the measurements were recorded in M Books and forwarded to A2 for the purpose of check measurements. A1 demanded him to pay a bribe and also instructed him to meet A2, for checking of measurements. The complainant approached A2 at his residence, on 19.06.2000 and requested for recording the check measurements in M Books. A2 demanded the complainant to pay the percentage of work and instructed him to meet A1 to pay the percentage and take away the measurement books from A1. Accordingly, the complainant met A1 on the same day, who demanded an amount of Rs.1,500/- as bribe towards the percentage of A2 and an amount of Rs.1,000/- as bribe for himself towards the percentage of work. A1 informed the complainant that only after the payment of the said amount the M-Books would be returned. The complainant was not willing to pay the said amount and hence, he approached the Deputy Superintendent of Police, ACB, Warangal, who laid a trap. In pursuance of the said trap, the complainant went and offered the amount, which was received by A1 and A2, after conducting the test, which revealed that they received the tainted amount, they were arrested and after due invigilation charge sheet was laid against the accused for the offence under Sections 7, 13(i)(d) and 13(2) of the Prevention of Corruption Act, 1988.

3. The trial court, on appearance of the accused before it, framed charges for the same offences and after recording the plea of not guilty, it conducted the trial of the case and examined PWs.1 to 7 and marked Exs.P1 to P7 and MOs.1 to 3 and Exs.X1 and X2 were marked on behalf of the prosecution. The incriminating circumstance in the evidence of the prosecution witnesses was put to A1 and A2 when they were examined under Section 313 Cr.P.C. and they denied the truth of the evidence. A1 filed a written statement. On behalf of the accused, Dws.1 to 4 were examined.

4. After considering the material on record, the trial court passed the impugned judgment. Aggrieved by the same, these appeals are preferred by A1 and A2 respectively, on the grounds that the court below failed to see that PW1 did not support the case of the prosecution case and evidence of PWs.1 to 4 which probablises the plea of the accused.

5. Heard learned counsel for the appellants and the learned Public Prosecutor.

6. The counsel for the appellants submits that the prosecution miserably failed to prove that there was any demand from the accused as the complainant did not support the case of the prosecution and was declared hostile and hence, the judgment of the trial court has to be set aside.

7. Learned Public Prosecutor submits that though the complainant turned hostile and did not speak about the demand

made by the appellants - accused, from the fact that there was a delay in complying with the required work by the appellants would show that it was done only after the bribe was paid to them.

8. On the above grounds, the points that arise for consideration are:

- 1) Whether the demand made by the accused is proved by the prosecution.
- 2) Whether the judgment of the lower court is sustainable.
- 3) To what result.

POINT NOs.1 and 2: -

9. PW1, who is the complainant, while deposing before the court, though narrated the facts pertaining to the allotment of the work to him as a contractor and about his completing the work, does not specifically state that the accused made any demand for bribe. According to him, in the month of June, 2000, he completed the work and thereafter, he went to the office of the accused and both the accused were not present there. Some staff members are present in the office and they asked him as to why he came to the office and then he replied them that he has completed the work and that he came to the office to receive the bill amount. The staff members informed him that his work will be done only on payment of money. Then while he was going to the house of MLA Sri B.Rajnauah, on the way one K.Surender Reddy met him and asked him as to why he came, he informed him what all happened in the office of the

accused. Then the said Surender Reddy informed him that he would get his bill amount paid to him and thus he took him to the office of ACB, Warangal. Then the said Surender Reddy made him sit outside the ACB office and entered inside the said office. He does not know what the said Surender Reddy talked with the ACB officials, but he informed him to bring Rs.2,500/- so that he would see that his bills amount is paid to him. He further deposed that he studied upto 6th class and he knows reading and writing telugu. But he admits that Ex.P3 is the complaint which is in his hand writing and it bears his signature. He further stated that the said Surender Reddy took the said complaint from him and he does not know to whom he gave the same. According to him, he drafted the complaint only on the dictation of the said Surender Reddy. He was declared hostile by the prosecution.

10. This being the evidence of the complainant, PW1, the evidence of the other witnesses does not prove the demand made by the complainant. PWs.2 and 3, are the persons, who acted as mediators in the trap proceedings at the request of the police. They spoke about the pre trap proceedings in which PW1 tendered the proposed bribe amount of Rs.2,500/- in the denomination of 500 rupee notes and 100 rupee notes. On the instructions of DSP, they noted down the serial numbers and they handed over the currency notes to the DSP, who in turn handed over the same to the constable. The constable applied some white powder to the said currency notes. The constable kept the tainted currency notes in the left side shirt pocket of

PW1, after ensuring that it was empty. The reaction of phenolphthalein powder with sodium carbonate solution was explained to all of them by a demonstration. At 07:20 AM on 22.06.2000, himself and the other mediator, DSP, along with PW1 and other trap members went to the vicinity to the house of A1 situated at Wadepally, Hanumakonda and reached the said locality at 07:30 AM. They parked the jeep at some distance from the house of A1. DSP issued instructions to PW1 and then PW1 entered into the house of A1 and they took their vantage positions near the house of A1. PW1 came out of the house of A1 at about 08:00 AM and relayed pre arranged signal to the trap party. On receiving the signal, all of them went inside. The DSP introduced himself to A1, they prepared some sodium carbonate solution in two glass tumblers and A1 was asked to rinse his both hand fingers separately in the said two glass tumblers, containing the said solution. When A1 did so, both the said solutions turned into pink colour. Then the DSP questioned A1 as to where he kept the bribe amount and then A1 picked up the wad of currency notes from his left side pant pocket and handed over the same to him. They counted the money and verified the serial numbers of currency notes with that of serial numbers of currency notes described in the pre trap proceedings. In the cross-examination, nothing material was elicited. However, his evidence does not prove the essential ingredient of the offence, i.e., the demand by the accused. In the cross-examination, on his stating that there is no mention of the name of A2 in the pre trap proceedings, he was declared

hostile. In the cross-examination, PW2 deposed that though he stated that when DSP questioned A1, A1 stated that PW1 kept the amount on the table and that since PW1 was working under him and with a view to return the said amount to PW1 he kept the same in his pant pocket, in the cross-examination by the Special Public Prosecutor, after he was declared hostile, he stated that, that part of his evidence is incorrect. PW3 also corroborated the evidence of PW2, but did not show any hostility to the prosecution case.

11. PW4 is the Executive Engineer in Panchayat Raj Department. He only spoke about the procedure of making demands to the contractors. According to him, after check measurements by the Deputy Executive Engineers, he has to send the M-Books to MPDO, Chityal. PW5 is the MPDO, Chityal Mandal of Warangal District, who knows the accused. His evidence does not bring out any complicity of the accused. He only spoke about the agreement entered with PW1 and about PW1 completing the work in pursuance of the said agreement. PW6 is the Section Officer in Panchayat Raj and Rural Development. His evidence is with regard to the sanction that was obtained for prosecuting the accused. PW7 is the Deputy Superintendent of Police, ACB, who received the complaint from PW1.

12. DW1 is a private watchman, who stated that on 22.06.2000, when ACB officials came to the house of A1 situated at Vijaypalreddy colony, Hanamkonda at 07:00 AM, the sarpanch

of Laxmipur was with A1 talking to him and after some time of their arrival, another person also came to A1. He was cleaning the floor of the house of A1. At that time, A1 handed over M-books to PW1, with a direction to hand over the same to the office. Then PW1 kept a wad of currency notes on the table of A1 and hurriedly went out. Then A1 asked PW1 to take the said amount back. But PW1 did not come back. Therefore, A1 kept the said amount in his left side pant pocket. In the meanwhile, officials came and caught him. DW2 is a teacher. He produced Ex.X1, which is file relating to the construction of Gram Panchayat Building at Laxmipur Village, Parkal Mandal of Warangal District. DW3 is the superintendent of MPDO office, who produced Ex.x2, which is the list of Sarpanchas of Parkal Mandal. DW4 is the Sarpanch of Gram Panchayat, Laxmipur in Parkal Mandal of Warangal District. He corroborated the evidence of DW1.

13. Whatever be the other evidence, the evidence of PW1 dismantles the case of the prosecution, as the genesis of the prosecution is the demand of bribe by the accused. When the very demand is not proved, the case of the prosecution does not sustain. In this regard, it is relevant to refer to the ruling of the apex court reported in P.SATYANARAYANA MURTHY VS. THE DISTRICT INSPECTOR OF POLICE ¹

“20. In a recent enunciation by this Court to discern the imperative pre-requisites of [Sections 7](#) and [13](#) of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes

¹ 2015 AIR (SC) 3549

from an accused without proof of demand would not establish an offence under [Sections 7](#) as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the Act. Qua [Section 20](#) of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under [Section 7](#) and not to those under [Section 13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7](#) and [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or 13 of the Act would not entail his conviction thereunder.”

14. As regards the contention of the Public Prosecutor, it can be understood from the record that the contract was allotted to the complainant on 04.12.1999, the contract was completed on 25.05.2000, and the complaint was lodged by the

complainant on 19.06.2000 *i.e.*, within one month of the date of completion of work. Hence, from the said time gap, it cannot be straight away assumed that the work was accomplished only after the complainant paid bribe amount to the appellants; it was completed within one month, which cannot be said to be an enormous period.

15. In view of the aforesaid discussion, this court is of the view that the prosecution miserably failed to establish the demand of bribe by the accused and thereby failed to prove the guilt of the accused beyond reasonable doubt. Therefore, the appellants are entitled for acquittal.

Accordingly, points 1 and 2 are answered.

POINT No.3: -

16. In the result, the Criminal Appeals are allowed and the conviction and sentence recorded against the appellants for the offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in C.C.No.21 of 2002, by judgment, dated 30.03.2007, are hereby set aside and consequently the appellants are acquitted of the charges leveled against them. The appellants/accused shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellants/accused shall be refunded to them.

T. RAJANI, J

September 24, 2018
LMV