

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1306 of 2008

JUDGMENT:

This appeal is directed against the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.25 of 2004 dated 06.10.2008 convicting the appellant-accused for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

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

The complainant is running a tea stall and his electricity service connection, which was in the name of his mother, was replaced with new meter, in the year 2003, while retaining the old service wire. On 17.11.2003, the accused came to his house along with another person and informed that the service wire was damaged and they noted the number of bulbs in the house and took his signature on a paper and disconnected the connection. The complainant went to the accused on the next day and the accused instructed him to get new service wire and that connection would be given. As such, he took new wire and connection was given on 19.11.2003. On 15.12.2003 one person from the accused office came to his house and informed that the accused was calling and he was asked to meet the accused and otherwise a case would be booked. He went to the accused, who informed that, he would book a case against him, if he does not pay Rs7,000/- or Rs.8,000/-. When the complainant pleaded that he was a poor man, the accused reduced the amount to Rs.3,000/-. On 02.01.2004, the complainant approached the accused and when he

pleaded that he cannot pay the bribe, the accused demanded to pay Rs.2,000/- and directed to pay it in two or three days. The complainant was not willing to pay the bribe, hence, he approached the ACB Officials. He lodged a report. Based on it a case was registered in Cr.No.3/ACB-HR/04 for the offence under Section 7 of the Prevention of Corruption Act.

On the date of trap i.e. 06.01.2004, the complainant met the accused at 11.15 AM and the accused, after ascertaining that the complainant brought the bribe amount, opened the table drawer and directed him to keep the amount in the drawer. Then the accused closed the drawer. On receiving the pre-arranged signal from the complainant, the trap part entered into the office of the accused. The phenolphthalein test conducted over the portion of the register on which the tainted amount was found in the table drawer of the accused yielded positive result. The currency was recovered from the table drawer of the accused. The mediator proceedings were recorded and after due investigation charge sheet was laid.

The case was taken on file by the Court below and charges were framed for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, which were read over to the accused. After recording the plea of not guilty by the accused and on his claim for trial, the Court below conducted trial of the case during which P.Ws.1 to 7 were examined and Exs.P1 to P14 and M.Os.1 to 7 marked on behalf of the prosecution. The accused denied the evidence of the prosecution when he was examined under Section 313 Cr.P.C and got examined D.W.1. The Court below, after considering the material and the evidence on record, passed the impugned judgment.

3. The appeal is preferred on the grounds that the Court below failed to see that there is no evidence with regard to the demand of bribe by the accused; it failed to see that P.W.6, DSP, ACB, without verifying the allegations made and the antecedents of the appellant, filed this case; it ought to have seen that P.W.6 ought to have seen that the complainant mentioned in the complaint that he was instructed by the accused to replace the damaged wire and disconnected the service connection and that on his replacing the service wire, his service connection was restored on the next day by the accused and that if a case is booked against P.W.1, the service connection of P.W.1 would not have been restored by the accused; it ought to have seen that before registering the case or laying the trap or acting on the complaint, P.W.6 ought to have verified whether the change of damaged wire amounts to any incriminating circumstances to book any case against the consumer; it failed to see that P.W.1 bore grudge against the appellant as he compelled him to take a second service connection as he was using the domestic service connection for running tea stall i.e. for commercial purposes and as he had to change the damaged wire and shift the meter from inside of his house to outside and that he had to suffer without electricity for one day during the Ramzan month; it ought to have seen that a case cannot be booked when there are no incriminating circumstances recorded in the inspection note, Ex.P5 and hence there was no official favour pending with the accused and it failed to see that the tainted amount was also not recovered from the physical possession of the accused and that the hands of the accused did not yield positive result when subjected to test in sodium carbonate solution. Based on the

above grounds, the appellant seeks this Court to set aside judgment of the Court below.

4. Heard the counsel for the appellant and the learned Public Prosecutor appearing for the respondent.

5. The counsel for the appellant contends that there was absolutely no official favour pending with the accused in order to demand bribe. The inspection notes, Ex.P5, prepared by him does not show any incriminating material found in the house of the accused. He contends that Ex.P5 was prepared on 18.11.2003 itself and that if any case has to be booked, it should be only within 2 or 3 days. The alleged date of demand is far subsequent to 18.11.2003 and hence, the evidence of P.W.1 with regard to demand, cannot be accepted. He also contends that the essential witness, who is the assistant lineman, who is the person, who came to the house of P.W.1 and informed him that the accused is calling, was not examined and hence, basic link in the prosecution case is missing.

6. The learned Public Prosecutor, on the other hand, contends that the inspection notes contained the columns, which would indicate that the accused wanted to fill up the columns based on the complaint meeting his demand of bribe and hence, it has to be understood that official favour was kept pending with the accused.

7. Based on the above arguments and the material on record, the following points can be taken up for consideration:

1. Whether any official favour was pending with the accused by the date of demand of bribe.

2. Whether the prosecution could prove the acceptance of bribe by the accused.
3. Whether the judgment of the Court below is sustainable.
4. To what result.

POINT Nos.1 and 2:

8. P.W.1, who is the complainant, reiterated the contents of the complaint, stating that he has a house in L.B. Nagar, Ranga Reddy District with electricity connection in the name of his mother. In the year 2003, the electricity meter was replaced with new meter but the old service wire was retained. On 17.11.2003, the accused, who is the AE, Kothapet, came to his house along with another person and noted the number of bulbs in his house and informed that the service wire to the meter was old and damaged and asked him to sign on a paper and took his signature on the paper. The AE disconnected the electricity connection to his house and on the next day, he went to the accused and met him and requested him that he would be put to trouble as there was no power in his house and as such, the accused asked him to get new service wire and he would restore the electricity connection. As such, he secured new service wire and the accused restored the connection on 19.11.2003. Again on 15.12.2003, one person from the AE office came and informed him that the accused was calling him to the office and also informed him that the accused asked him to meet him at his office and otherwise a case would be booked against him. As such, he went to the office of the accused and met him. The accused informed him that he would book a case against him and that he has to pay Rs.7,000/- or Rs.8,000/- to

him. When he pleaded that he is a poor man, the accused reduced it to Rs.3,000/-. Then he informed the accused that he is unable to pay the amount. Again on 02.01.2004 the accused called him through one person, to his office and asked him to meet him and accordingly, he met the accused in his office and requested him that he is unable to pay the demanded bribe amount of Rs.3,000/- and then the same was reduced to Rs.2,000/-. But he was not willing to pay the bribe amount, hence, he approached the ACB officials. Thereafter, the trap was prepared.

At the time of trap, he proceeded to the office of the accused while the trap party members took vantage positions outside the office. He went into the room of the accused and found the accused sitting in his chair. The accused asked him as to why he came late and enquired whether he brought the demanded bribe amount and when he replied positively, the accused asked him to give the amount and he picked out the tainted currency notes from his left side shirt pocket and then the accused pulled the right side office table drawer and asked him to keep the said amount in the drawer. As such, he kept the tainted currency notes of Rs.2,000/- in the said table drawer. Then the accused moved back and closed his table drawer and the accused informed him that he will not book a case against him. After receiving the pre-arranged signal, the trap party rushed into the office room of the accused, while he was waiting outside. The DSP called him inside and asked him to narrate about the happenings between him and the accused.

In the cross-examination, he admitted that he stated before the Magistrate in his 164 Cr.P.C statement that the ACB officials came into

the office of the accused, on receiving his signal and enquired him where he kept the money and he informed that the amount was kept in the table drawer.

9. The counsel for the appellant, based on the evidence of P.W.1 itself, contends that the version of P.W.1 itself would reveal that the accused did not make any demand and that he did not have any intention to make any such demand. He contends that if there was any real intention to demand any bribe, the accused could have demanded it at the time of restoration of electricity connection to the house of P.W.1 on 19.11.2003, as according to the evidence of P.W.1, he was anxious to get the electricity connection restored to his house during the Ramzan festival. He points out the artificiality in the evidence of P.W.1 and contends that when there is no official favour pending subsequent to 19.11.2003, by which time the electricity connection was restored, there is absolutely no necessity to make any demand of bribe. He also contends that the inspection report, Ex.P5, was prepared on 18.11.2003 and the same was seized from the accused on the day of trap. Hence, the fact that the report contains dates would prove that there was no intention on the part of the accused to manipulate Ex.P5. He also contends that as there is no incriminating material found, the appellant did not fill up the columns, which are found to be blank in Ex.P5.

10. Though the said argument regarding keeping the columns blank is not cogent, the fact that the date of Ex.P5 was mentioned as 18.11.2003 would prove that there is no scope for the accused to manipulate Ex.P5.

11. Based on the admission that is made by P.W.1 that he mentioned in his 164 Cr.P.C. statement that the ACB officials enquired with him as to where he kept the money and that he informed that he kept the money in the table drawer, the learned counsel contends that said procedure is not the correct procedure, as the ACB officials are expected to enquire with the accused as to where he kept the money and not with the complainant and the said fact would only go to prove that the accused did not have knowledge about where the money was kept. A suggestion was given to P.W.1 that he planted the tainted amount in the table drawer of the accused in his absence and that the accused neither demanded nor accepted or directed him to keep the said amount in his table drawer. With regard to motive, it was suggested that he bore grudge against the accused as he was responsible for converting his domestic service connection to commercial and for his taking new service connection and also for disconnecting his service for one day during the month of Ramzan due to the damaged service wire.

12. P.W.2. the Supervisor in the office of the Chief Engineer, CDO, Hyderabad, knows L.W.3, who is the Assistant Technical Officer in their office. According to him, on 05.01.2004, his Chief Engineer instructed him and L.W.3 to go and report before the DSP, ACB and as such, he went there and acted as mediator for the trap proceedings, along with another mediator.

Speaking about the events that took place at the time of trap, he states that they reached the office of the accused at about 11.05 AM and they all got down from the vehicles. The DSP, ACB instructed

the complainant and asked him to go to the AE office and pay the bribe amount only on his demand and not otherwise and give the pre-arranged signal. As such, the complainant went inside the AE office and at about 11.15 PM, the complainant relayed the pre-arranged signal. Then they proceeded into the office room of the accused. The DSP got prepared sodium carbonate solution and requested the accused to rinse his both hand fingers and when he did so there was no change in the colour of the solution. The DSP questioned the accused whether he has demanded and accepted any bribe amount from the complainant and the accused denied the same. The DSP called the complainant and requested him to narrate what happened after he left the trap party and went into the office of the accused and the version of the complainant was incorporated in the trap proceedings.

13. The counsel, on the basis of the above version, contends that the innocence of the accused is evident from the fact that he could not speak about the place where the amount was kept. The DSP had to call the complainant and had to know about the place where the tainted amount was kept only through him, which shows that the accused was not at all present when the amount was planted in the table drawer of the accused.

14. P.W.3 is the Assistant Divisional Engineer, Operation Saroornagar Sub Division, APCPDCL, who knows the accused, who worked as Assistant Engineer in RK Puram section. He spoke about the procedure of submission of inspection notes to the Sub Divisional Office. According to the procedure, the Assistant

Engineer/Section Officer has to submit the inspection notes to the Sub Divisional Office within two or three days after inspection. The inspection report has to be prepared in duplicate. The duplicate has to be given to the consumer and the original must be sent to the Sub Divisional Office. After receipt of the inspection notes, the Sub Divisional Office will issue the initial assessment notice to serve on the consumer through the Section Officer. The original inspection notes will be sent to the Anti Power Theft squad for necessary action. In this case, he states that no inspection report was sent to the Sub Divisional Office.

In the cross-examination, he states that it is the sole discretion of the inspection officer to decide whether any case has to be booked or not after conducting the inspection. The said officer concerned has to record the incriminating circumstances on the inspection note, at the time of inspection. He further explained that instruction to change the old service wire with a new one is not an incriminating circumstance and it does not warrant booking of a case. According to him, the Assistant Engineer is competent to disconnect the service pending replacement of the old service wire with the new one and when the service wire is changed to the satisfaction of the AE, he can restore the service connection and he can inspect and instruct the consumer to shift the meter from inside the house to outside the house and it is not incriminating circumstance to book a case. He further stated that only in case the AE decides that there are incriminating circumstances to book a case, he should send the same within two or three days from the date of inspection to the ADE, otherwise, there is no obligation to send the inspection note to the

ADE. By looking at Ex.P2, there are no incriminating points recorded by the accused in connection with service of P.W.1, except the service particulars and signature of the consumer. He also did not receive any complaint from P.W.1 against the accused at any time and he had not received any other complainants against the accused.

15. On the basis of the evidence of P.Ws.1 to 3, the counsel for the appellant contends that as the inspection notes were not submitted within two or three days, as required by the procedure, it can be safely concluded that the accused did not have any intention to book a case against the complainant and hence, no official favour can be held to be pending with the accused.

16. P.W.4 is a witness, who obtained sanction to prosecute the accused. P.W.5 is the Chief General Manager, APCPDCL, who worked as DEE Operations during the relevant period. According to him, the procedure for booking a case is, after the inspection the AE has to submit the inspection note to ADE, if a case is booked. All the incriminating points will be noted in the inspection notes, the statement of the consumer will be recorded and the copy of the inspection notes will be furnished to the consumer and his acknowledgment also to be taken on the inspection notes. After ADE receives the notes of inspection in a booked case, he will assess the pilferage quantity and prepare assessment notice and the same will be sent to the consumer through AE. One copy will also be sent to APTS. The inspection note has to be sent within 3 to 4 days. The evidence of P.W.5 is reiteration of evidence of P.W.3 as regards the procedure in booking a case against the consumer.

17. P.W.6 is the DSP, ACB, who states about the pre and post trap proceedings. According to him, when he questioned the accused whether he received any bribe, he denied having demanded and accepted bribe. Then he called the complainant and examined him and incorporated what all he stated in the post trap proceedings, which is marked as Ex.P11. Then he opened the table drawer and took out currency notes. P.W.5 is the Investigating Officer, who filed the charge sheet.

18. On behalf of the accused, D.W.1 alone was examined, who is sweeper cum attender. According to her evidence, the accused room will always be kept open. The accused came to the office at about 11 AM, when she was sitting at the entrance of the room of the accused. One person came and enquired about the accused and she informed that the accused is at the revenue counter and asked him to sit inside the room of the accused. After the said person sat in the room of the accused, she went and informed the accused, who was at the revenue counter. Thereafter, the accused went into his room and she did not see the person any time before.

19. Whatever be the strength of the evidence of P.W.1, the evidence of the prosecution itself does not suffice to bring home the guilt of the accused. Neither the demand nor acceptance is proved by the prosecution, except by way of the evidence of P.W.1, against whom motives were alleged, which can be considered as sufficient to foist a false case against the accused. The case was sufficiently aggrieved by the acts of the accused in disconnecting the service connection that too during the important period, which is the period of

Ramzan. The spot explanation given by the accused that he did not receive any amount also supports the defence taken by him that he was not aware of P.W.1 putting the currency in his table drawer. The fact that Ex.P5, which is dated 18.11.2003, was recovered on the spot is already observed as ruling out the possibility of booking the case against the complainant. One possibility with regard to the demand of bribe would be based on the ignorance of P.W.1 about the procedure of booking cases. It is possible that the accused might have taken advantage of the ignorance of PW.1 about the procedure and might have made an offer to realise some amount on the pressure of booking a case. But the said assumption cannot be made unless the prosecution lays sufficient foundation for its case. When all the circumstances brought before the Court below would suggest the impossibility of booking a case against the complainant, merely based on an assumption, the said evidence cannot be brushed aside.

20. The law with regard to the acceptance of bribe is that when once acceptance is proved, the burden lies on the accused to prove otherwise. But, in this case, the onus of proof does not shift to the accused as no acceptance is proved.

21. The counsel for the appellant contends that the failure of conducting test to the handle of the drawer would also strengthen the contention of the accused that it was the complainant, who opened the drawer. He further contends that if the said test was conducted, it would have proved beyond doubt that it was the complainant himself, who has opened the drawer, without the knowledge of the accused. There is some force in the said contention. The failure to

examine the person, who called the complainant to the accused, also would have sufficient bearing on the case.

22. The decision in *M.K. HARSHAN v. STATE OF KERALA*¹ rendered by the Supreme Court dealt with a case where the tainted amount was recovered from the drawer of the accused and where the trap witness stated that the accused has said to put them in drawer. It was held that in the absence of evidence corroborating his deposition, the same cannot be relied upon, more particularly when the plea of the accused that the same was planted in his absence and without his knowledge, was found to be probable. In that case, it was also observed that the versions of the prosecution witnesses were found to be contradictory as to whether the accused himself put the currency notes in the drawer or he asked the trap witness to do so.

23. The decision in *GANAPATHI SANYA NAIK v. STATE OF KARNATAKA*² is to the effect that in the foremost the question to be established by the prosecution was as to the demand for money from the complainant and the recovery of the money at the instance of the appellant. It held that the evidence of the witnesses with regard to the recovery of the cash from the table, under the files was not believable and the defence version that the money had been put on the table surreptitiously and without the knowledge of the accused, appeared to be more plausible and worthy of acceptance.

¹ 1995 CRILJ 3978

² (2007) 8 SCC 309

24. The decision in STATE OF TAMIL NADU v. KRISHNAN³ is also on the same lines. The decision in AYYASAMI v. STATE OF TAMIL NADU⁴ is to the effect that when there is no independent evidence to show that the appellant demanded Rs.100/- as bribe from the complainant and when the chemical solution did not inculcate him and when the money was recovered from the drawer and when there is no evidence apart from the complainant to show that the money was placed in the drawer by the complainant at the asking of the appellant, the conviction has to be held as being based more on probabilities than on the evidence proving the guilt against him beyond reasonable doubt.

It can be seen that the prosecution does not have the support of law, for the kind of circumstances that it proved before the Court below. Hence the points are answered in favour of the appellant.

POINT No.3:

In view of the conclusion under point Nos.1 and 2, this Court opines that the judgment of the Court below is not sustainable.

POINT No.4:

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accused vide the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.25 of 2004 dated 06.10.2008, are set aside. The appellant-accused is acquitted of the charges levelled against him

³ 2001 AIR SCW 2415

⁴ 1992 CRILH 608

and he shall be set at liberty forthwith, if not required in any other case. The fine amount, if any paid by the appellant-accused, shall be refunded to him. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 14, 2018
DSK

T. RAJANI, J

