SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.685 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 16.05.2006, passed in C.C.No.3 of 2001, by the Court of Principal Special Judge for SPE & ACB Cases – cum – IV Additional Chief Judge, City Civil Court, Hyderabad, by virtue of which the trial court convicted the accused for the offence under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced him to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.800/- in default to suffer simple imprisonment for one month for the offence under Section 7 of the Act and sentenced to undergo RI for one year for the offence under Section 13(1)(d) of the Act punishable under Section 13(2) of the Act and also to pay a fine of Rs.800/- in default to pay fine amount to under simple imprisonment for one month.

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

The *de facto* complainant, who is a police constable in the police control room, submitted a medical reimbursement bill in the month of April, 1999, to the Medical Superintendent, District Headquarters Hospital, Karimnagar, through the District Police Office, Karimnagar, with regard to the delivery of his wife for the caesarean operation conducted on 26.03.1999 at a private nursing home at Karimnagar. The said Superintendent scrutinized the bill and sanctioned an amount of Rs.4,173/- towards medical reimbursement on 24.04.1999 to the *de facto* complainant and sent the same to the accused for despatch. When the *de facto* complainant approached the accused on 04.05.1999 and again on 05.05.1999, the accused demanded an amount of Rs.1,000/- as bribe for dispatching the said medical reimbursement bill, for which the *de facto* complainant pleaded his inability and ultimately the accused reduced the same to Rs.800/- and instructed PW1 to pay the said demanded bribe amount on 07.05.1999. Not willing to pay the said bribe amount to the accused, the *de facto* complainant approached the Deputy Superintendent of Police (DSP), ACB Warangal Range FAC Karimnagar Range and lodged a report on 06.05.1999. Based on the same, the DSP registered as a case in Crime No.2/ACB-KNR/1999 under Sections 7 and 11 of the Act on 07.05.1999 at 08:00 AM, issued FIR and took up investigation.

During the course of investigation, the DSP conducted trap proceedings; the sodium carbonate test was conducted on both the hands of the accused and also the inner flap of wearing lalchi pocket of the accused and the same yielded positive result; recovered the tainted amount of Rs.800/- from the accused; post trap proceedings were also conducted; arrested the accused; seized all the relevant documents; recorded the statements of the witnesses under Sections 161 Cr.P.C and the statement of the *de facto* complainant was recoded under Section 164 Cr.P.C by the Judicial Magistrate of First Class, PCR, Karimnagar. The DSP, after completion of the investigation and after receipt of the sanction order under Ex.P7, filed charge sheet against the accused for the offences under Sections 7, 11 and 13(1)(d) r/w 13(2) of the Act.

3. The trial court took the case on file and after complying with all the legal formalities, framed charges against the accused for the offence under Sections 7 & 13(1)(d) r/w 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. During trial, PWs.1 to 6 were examined and Exs.P1 to P8 and MOs.1 to 8 were marked on behalf of the prosecution. The accused was questioned about the incriminating circumstances appearing against him in the evidence of prosecution witnesses, when he was examined under Section 313 Cr.P.C. The accused denied the truth of the evidence of the prosecution witnesses and he got examined DWs.1 to 5 and marked Exs.D1 to D4 on his behalf.

4. After considering the evidence and material on record, the lower court passed the impugned judgment, convicting the accused, as aforementioned.

5. Aggrieved by the said judgment, this appeal is preferred on the grounds that the trial court failed to see that the prosecution failed to prove its case beyond all reasonable doubt with regard to the initial demand and subsequent demands and also payments as well as acceptance by the appellant, as such the appellant is entitled to clean acquittal; it ought to have seen that there is any amount of discrepancy in the evidence of PW1

with regard to his visits to the Government Hospitals or his meetings with the appellant prior to the date of trap; it ought to have seen that except the solitary evidence of PW1, there is no independent evidence to show that PW1 came to the hospital and met the appellant; it failed to consider the unnatural conduct of PW1 to the effect that as per the prosecution on that the superior officer (RMO) of the appellant was sitting in the same room, but PW1 never brought to the notice of RMO about alleged demand and the delay on the part of the appellant for doing favour; it ought to have seen that the visits of PW1 to the hospital and meeting the appellant on 04.05.1999 and 05.05.1999 and the appellant demanding PW1 for Rs.1,000/- and reducing it to Rs.800/- to send the bill is false, for the reason that the appellant was on leave on those two days as per Ex.X1, which fortifies the evidence of PW5; it ought to have seen that under Ex.P6 the appellant made statement before PW2 spontaneously to the effect that PW1 forcibly gave that amount to him but he did not demand any amount from PW1 and the said amount was forcibly thrusted into his pocket and his statement is fortified by the evidence of PW11 and Exs.D2 and D3; it ought to have seen that the appellant is not concerned with the work of medical reimbursement, as such the question of demand and acceptance by the appellant and payment by PW1 does not arise; it failed to see that there is no valid sanction even as per the evidence of PW3, who categorically deposed that he automatically sanctioned the prosecution even after he received the request from DG, ACB; it ought to have seen that

DM & HO is the appropriate authority of the appellant, as such, he is alone competent to accord sanction but not secretary and that it should have disbelieved the solitary and interested testimony of PW1 as there was no corroborative evidence, as the same was proved false by the evidence of DWs.2 and 3, who were present at the time of occurrence.

6. Heard the counsel for the appellant and the Public Prosecutor appearing for the respondent.

7. The counsel for the appellant contends that the court below completely ignored the evidence, which pointed towards the innocence of the accused, and passed the impugned judgment. He submits that by virtue of Exs.X1 and D4, the accused could prove that he was on casual leave on 04.05.1999 and 05.05.1999 and hence, the evidence of PW1 that he met the accused on 04.05.1999 is absolutely false. He further submits that by virtue of Ex.D1, the motive for PW1 to foist this false case is also proved beyond all reasonable doubt, but the court below ignored the said document. He further submits that Exs.P2 and P5 would show that the medical bill was dispatched to the Superintendent of Police, Karimnagar, on 24.03.1999 itself and hence, no official favour stands pending with the accused.

8. The Public Prosecutor, on the other hand, submits that though the documents filed by the accused viz. Exs.X1 and D4 would show that leave was sanctioned to the accused, the supporting registers were not filed in proof of the said

documents. Hence, the said documents cannot be given any weight. He also contends that Ex.D1 letter cannot be taken into consideration as against the evidence of PW1, who speaks about the demand.

9. Keeping in view the above arguments and based on the evidence, the following points are framed for consideration:

1) Whether the accused would prove his defence by preponderance of probabilities.
2) Whether the prosecution could prove the alleged demand made by the accused and whether the judgment of the court below is sustainable.
3) To what result.

<u>POINT Nos.1 and 2</u>: -

10. The evidence of PW1 is that he is working as a constable in the District Crime Records Bureau, Karimnagar. Earlier he worked as Police Constable in police control room, Karimnagar from the year 1997 to 2003. On 26.03.1999, he admitted his wife, who was pregnant, in Latha Maternity Nursing Home, Karimnagar, for the purpose of delivery of child and on the same day, she gave birth to a child. He paid total amount of Rs.7,703.65 ps. Thereafter, he prepared a medical reimbursement bill for the above said amount of Rs.7,703.65 ps. and submitted it to the District police office through his officer. The district police office endorsed his said application and sent it to Government hospital, Karimnagar. Twenty days prior to giving the complaint, the superintendent of the Government Hospital,

Karimnagar, passed his bill and gave it to one Basith, who is the clerk of the said Superintendent, to despatch it. On coming to know about the passing of the bill, he went and met the said clerk and enquired about his bill, who said he will send the bill. For ten days he did not send that bill, thereby he again met him, then he said he was busy and asked him to meet him after four days. On 04.05.1999, when PW1 went and met the accused, he told him that the bill will not be sent free and if he pays Rs.1,000/- bribe, he would send the bill. He pleaded the said clerk, stating that he incurred much expenditure and cannot pay the demanded amount.

11. This being the evidence of PW1, the counsel for the appellant draws the attention of this court to Ex.P2, which is dated 24.03.1999 and Ex.P5, which is dated 13.04.1999, the letter issued to the Medical Superintendent, District Headquarters Hospital by the Superintendent of Police, Karimnagar, along with copy of Ex.P2. The counsel contends that while the application was sent from the Superintendent of Police, Karimnagar on 13.04.1999, it was referred to A2 section on 16.04.1999 itself and Ex.P2 shows that the bill was recommended for sanction for an amount of Rs.4,173/-. Hence, he contends that when the bill was already signed on 24.03.1999 and the same was sent to the Superintendent of Police, Karimnagar, the question of official favour pending with the accused as on 04.05.1999, does not arise. This court finds some force in the said contention.

12. In order to draw support to the contention that the accused foisted this false case with an ulterior motive, he draws the attention of this court to Ex.D1, which is a letter addressed to the accused by Md. Nafeez, who is examined as DW1.

13. At this stage, it is pertinent to go through the evidence of DW1. DW1's evidence is that he worked as a lorry driver in Lepakshi Transport Company at Godavarikani and he shifted to Karimnagar in the year 1999. He further deposed that he knows the accused, who is a close friend, as he was his classmate and they used to reside in the same locality while he was at Karimnagar and they used to move together. He used to lend Rs.1,000/- and Rs.500/- during month endings to PW1 at his request as hand loan and on two or three occasions he had lent like that. During the month of March, 1999, he lent Rs.1,000/- to PW1, for which he executed a promissory note in his favour. When he was shifted to Godavari Khani from Karimnagar, he addressed him a letter demanding him to repay the loan amount, but he did not give any reply to it. He went to his house but he was not available at his house and he told his wife to inform that he visited the house when PW1 returned home. But despite the same, there was no response from PW1. Thereby, he addressed a letter to the accused on 29.04.1999, asking him to meet PW1 and collect the due amount to him. He also requested the accused that in case PW1 pays the amount to him, to inform him so that he would return the promissory note to PW1. He further states that on 08.05.1999 he read in the newspaper that the accused was got trapped by

PW1. On the next day, he went to the house of the accused and met him, on which the accused told him that on account of Ex.D1, he had landed in trouble in a false trap as he went to collect the amount from PW1 at his house. Then he went to PW1's house. As he was not available, he informed his wife to ask him to meet him at his father-in-law's house situated at Mankammathota Karimnagar town. Two hours thereafter PW1 came and met him and asked him to show promissory note executed to him. He has shown it to him and he has given him Rs.1,000/-. On receiving that he has handed over the promissory note to him and he tore it away in his presence. When he enquired him as to why he got the accused falsely trapped, he replied that when he applied for medical bill reimbursement of his wife, claiming Rs.7,000/- and odd, the office of the accused restricted it to Rs.4,000/- and that the accused was instrumental for it and that the accused was very proud, hence, he got the accused trapped in a false case.

14. The evidence of DW1 stands highly probablised by Ex.D1, which is a postal cover, which cannot be said to be fabricated after filing of this case, as it contains a stamp of the postal department also. In Ex.D1, a request was made to the accused to collect the amount of Rs.1,000/- from PW1 and give it to him. The fact that PW1 was not discharging the loan of DW1 in spite of several requests, as reflected in Ex.D1, forms a strong basis for falsely implicating the accused in the alleged offence. The fact that the accused was on leave is evidenced by Ex.X1 and Ex.D4. Ex.X1 is the application made by the accused for

leave on 04.05.1999 and 05.05.1999. Ex.D4 is Certificate issued by the Assistant Director, District headquarters Hospital, who was examined as DW4 sanctioning the leave on 04.05.1999 and 05.05.1999.

15. The Public Prosecutor contends that the attendance register, which is admittedly available in the office, is not produced by the accused and hence, no value can be attached to the leave application and certificate issued by DW4.

16. In answer to the said contention, the counsel for the appellant relies on a judgment of the Apex Court reported in GANGA KUMAR SRIVASTAVA vs. STATE OF BIHAR[1], wherein it was held that failure of the accused public servant to produce the casual leave register of the Department concerned to show that he was on leave on the alleged date of acceptance of bribe at office cannot lead to an adverse inference. Though the said register was not produced, application made for casual leave on that particular date was produced and the said application as well as absence of accused on the said date was proved by examining one of the officers of the Department. Hence, it was held that the courts below erred in drawing an adverse inference against the accused for not producing the casual leave register.

17. The facts of the case dealt with in the above said ruling are absolutely similar to the facts of this case. Hence, the leave application has to be taken as good evidence to prove the defence of the accused.

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[1] (2005) 6 SCC 211

18. Hence, in view of the above, mere recovery of tainted amount from the accused cannot suggest any guilt on the part of the accused. In that regard, the counsel for the appellant relies on a ruling of the apex court reported in C.M.GIRISH BABU vs. CBI, COCHIN, HIGH COURT OF KERALA[2], wherein it was held that mere recovery of tainted amount from the accused would not suffice to convict him when substantive evidence is not reliable. In that case also the defence taken by the appellant therein was that the amount in question was for repayment of the loan taken from his assistant. The other ruling on the same aspect is also relied on by the counsel for the appellant, which is reported in STATE OF PUNJAB vs. MADAN MOHAN LAL VERMA[3].

19. All the above circumstances, proved by the appellant, would throw any amount of doubt on the case of the prosecution and hence, this court opines that it would not be safe to convict the accused.

Accordingly, points 1 and 2 are answered in favour of the appellant.

<u>POINT No.3</u>: -

20. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant vide judgment, dated 16.05.2006, passed in C.C.No.3 of 2001, by the Court of Principal Special Judge for SPE & ACB Cases cum IV

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[2] (2009) 3 SCC 779
[3] 2013 Cri.L.J.4050

Additional Chief Judge, City Civil Court, Hyderabad. Consequently, the appellant is acquitted of the charges leveled against him. The appellant shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant shall be refunded to him.

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

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T. RAJANI, J

December 17, 2018
LMV