

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1759 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 22.12.2006, passed in C.C.No.9 of 2001, by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Courts, Hyderabad, by virtue of which the trial court convicted the accused for the offence under Sections 7 and 13(1)(d) 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.500/- in default to suffer simple imprisonment for one month for the offence under Section 7 of the Act and he was 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.500/- in default to pay fine amount to undergo SI for one month.

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

One Desu Laxman and one Venkanna, who are residents of Panikara village of Nekkonda Mandal of Warangal district, are the leaders of NTR Youth Association (hereinafter referred to as "Association") of the said village. The members of the said Association, who were selected for sanction of financial assistance for the purchase of tractor under CMEY Scheme for the year 1998-99 as per the proceedings of the District Collector

SETWAR, Warangal, have been intimated to submit the required documents in 15 types of certificates through concerned MPDOs and MDOs. Accordingly, on 11.05.1999 the complainant and LW2 submitted the loan application by enclosing concerned certificates, except the DRDA 21 column statement, as the accused did not sign the same. PW1 and LW2 approached the accused at his office i.e., MPDO several times, to get his signature on DRDA 21 column proforma, but in vain. At last, the complainant and LW2 requested the accused about the formalities. The accused asked them that the other youth members had given Rs.2,000/- each and likewise, he demanded the complainant and LW2 to pay Rs.2,000/-. Thereby, they discussed among their youth members and decided to pay an amount of Rs.1,500/- in stead of Rs.2,000/- and the same was conveyed to the accused in turn. The accused asked them to get initial of the VAO or the Junior Assistant of DRDA 21 column statement. On 17.07.1999, Desu Laxman and LW2 approached the accused at his office to collect the DRDA 21 column statement but the accused did not sign on the said proforma and kept it pending, with an intention to extract money from the complainant and LW2 and the accused asked them to come to his residence at Kumarpally, Hanumakonda on 18.07.1999 morning along with the said DRDA 21 column proforma statement and demanded bribe amount of Rs.1,500/-. Since the complainant, LW2 and their Association members were not willing to pay any bribe amount to the accused, the complainant and LW2 approached the then DSP, ACB

Warangal on 17.07.1999 at 15:00 hours and submitted a report, containing signature of the complainant and LW2. After verifying the antecedents of the accused and about the genuineness of the complaint, the DSP registered the case as crime No11/ACB-WRL/99 for the offence under section 7 and 11 of the Act and took up investigation.

During the course of investigation, the DSP, secured the mediators; laid pre and post trap proceedings against the accused; conducted sodium carbonate test on the fingers of the accused; arrested the accused; seized the material objects and the relevant records and filed charge sheet.

3. The trial court took the case on file and after complying with all the legal formalities, framed charge against the accused for the offence under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. During trial, PWs.1 to 7 and Exs.P1 to P13, and MOs.1 to 8 were marked. 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. He denied the truth of the evidence and on his behalf he examined DWs.1 to 6 and got marked Exs.X1 to X6.

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 ingredients to constitute the said offences are not made out by any legal and reliable evidence. The trial court erred in placing reliance on the highly interested and discrepant testimony of the prosecution witnesses. The trial court erred in coming to a conclusion that the appellant demanded and accepted an amount of Rs.1,500/- as illegal gratification, to do official favour of subscribing his signature on Ex.P6. The trial court should have seen that there is official favour pending with the appellant and Ex.P6 was already signed by the accused on 13.07.1999 itself. The trial court should have seen that PWs.1 to 3, who are most crucial witnesses to the prosecution, did not support the prosecution case and they were treated hostile by the prosecution. The trial court failed to see that there is absolutely no evidence on record, to show the alleged demand made by the appellant. The trial court should have seen that the tainted money was recovered from the floor of the first room but not from the appellant. The trial court failed to see that PW6,, the trap laying officer, made the appellant to touch the notes and after that he conducted the phenolphthalein test to the hands of the appellant. The trial court should have seen that phenolphthalein test was not conducted to the relevant documents covered under Ex.P6, to establish that the appellant accepted the bribe amount before he signed on Ex.P6. The trial court failed to see that the explanation offered by the appellant was not properly incorporated in Ex.P8 post trap proceedings, by

PW6. The trial court should have seen that the appellant was implicated in the trap case at the instance of one Venkanna. The trial court failed to see that the appellant proved his case on preponderance of probabilities. The trial court erred in not attaching any importance to the evidence of DWs.1 to 6. the trial court should have seen that Ex.P10 sanction order was issued mechanically without application of mind and the same is not valid under law.

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

7. The counsel for the appellant submits that the prosecution has totally failed to prove the demand allegedly made by the appellant from PW1 as PW1 turned hostile. The official witnesses also did not support the case of the prosecution. Hence, the conviction recorded by the trial court suffers from perversity.

8. The Public Prosecutor, on the other hand, submits that when acceptance of bribe amount is proved through the evidence of the mediator and the investigating officer, there need not be any reason to seek for support with regard to the demand made by the accused, from PW.1 and the burden shifts to the accused soon after the acceptance is proved; as the accused did not discharge his burden of proving his innocence, the lower court has rightly convicted him and hence, there is no need for any interference with the judgment of the trial court.

9. Based on the arguments extended by either side and the material on record, the following points are framed for consideration:

1. Whether in spite of the hostility of PW1, the case of the prosecution stands proved.
2. Whether the judgment of the court below is sustainable.
3. To what result.

POINT No.1: -

10. PW1, who is the complainant in this case, lodged Ex.P1 report, stating that accused demanded bribe amount in order to sign on the statement prepared by them, which is required for the sanctioning of the loan amount in favour of the Association of which the complainant is a member. The loan was applied for, for purchase of a tractor. When the accused was requested to sign on the statement, he sent him away, saying that all the groups have given him money and that if they also gave him money, he would sign the papers. Then the complainant and their first leader V.Venkanna went to the accused and informed that their group have decided to give Rs.1,500/- and pleaded that they cannot afford more than that. Then the accused agreed with them and asked them to bring the money to his house at Hanumakonda the next day and to obtain the signature on the 21 column statement.

11. The complainant, who was examined as PW1, did not support the case of the prosecution and the contents of the report given by him. He denied having given any report.

According to him, he signed on the report, which was signed by Venkanna, the first leader and as he asked him to sign and reposing confidence in him, he signed on the report, without knowing the contents. Hence, the demand of bribe amount by the accused stands not proved through the evidence of PW1.

12. PW3, who is the Junior Assistant in Panchayat Raj Department, who earlier worked in the office of mandal praja Parishad development office at Nekkonda at Warangal District, deposed that on 13.07.1999 at about 11:00 AM, PW1 and LW2 came to their office and brought Ex.P6 DRDA Statement to their office. He verified the said statement and initialed on the same. He placed Ex.P6 before the accused and he also signed on Ex.P6 on the very same day and subsequently, it was sent to outward section in their office. He was informed that on the very same date, PW1 and LW2 collected Ex.P6 from outward section clerk of their office. He was also declared hostile. The evidence of PW3, hence, does not help the prosecution to prove any demand. The cross-examination done by the Public Prosecutor also does not accrue to the benefit of the prosecution, as no incriminating material could be elicited.

13. PW4, who is the Chief Executive Officer, Setwar during the relevant period, deposed that in the year 1999 NTR Youth Association, Panikara headed by PW1 and LW2 applied for a tractor loan in their office. Interviews were also conducted by RDO, MRO, and MDO concerned and the said Association was selected for sanctioning the said loan, in the said interview.

The District Collector, Warangal, issued sanction proceedings and loanees were directed to produce 15 types of documents. Two cheques i.e. one for Rs.70,000/- and another for Rs.40,000/- were prepared at their office on 03.07.1999 towards payment of loan amount to the said Association. But the said cheques were not handed over to PW1 and LW2 as Ex.P6 statement was not produced by them. On 20.07.1999 the said two cheques were handed over to PW1 and LW2 at their office.

14. There is a possibility of assuming that the accused refused to sign on Ex.P6 statement as bribe amount was not given to him as demanded. But in the considered opinion of this court, such assumption is not permitted by law. There should be initial discharge of burden by the prosecution by proving the demand. Acceptance of the amount also is not proved, as PW2, who is the mediator to the trap proceedings only spoke about the recovery of the amount from the accused. According to him, after receiving the pre arranged signal all the trap party members including himself and DSP rushed into the house of the accused and found the accused sitting in a chair in the first room of the house. The DSP introduced himself and the mediators to the accused. On seeing them the accused picked up wad of currency notes and threw the same on the ground and made an attempt to go inside of the house, then the DSP restrained him and made him to sit on a chair. Whether this simple act of the accused throwing the wad of currency notes, would amount to acceptance of bribe has to be examined.

15. In that regard, it is relevant to refer to the ruling of the Supreme Court reported in *A.SUBAIR V. STATE OF KERALA*¹ wherein it was held that the Court is not justified in drawing presumption under Section 20 and holding that offence punishable under Section 7 of the Act was proved by virtue of mere recovery of currency, when there is no proof of demand or request from the public servant. It held that mere recovery of currency by itself cannot be proper or sufficient proof of demand or acceptance of bribe.

16. The judgment of the apex court reported in *SARVIR SINGH V. STATE OF DELHI*² is to the effect that the question of onus being on the accused to disprove presumption would not arise when neither acceptance of illegal gratification of the accused nor recovery of illegal gratification from the accused is proved.

17. The judgment of the Supreme Court reported in *SURAJ MAL V. THE STATE*³ is to the effect that mere recovery of money from the accused, divorced from the circumstances, is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. It was also held that it is well settled that where witnesses make two inconsistent statements in their evidence, either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special

¹ 2010(1) ALD (CrL.) 497 (SC)

² 2015(1) ALD (CrL.) 48 (SC)

³ AIR 1979 SC 1408

circumstances no conviction can be based on the evidence of such witnesses.

18. There is yet another judgment rendered by the Supreme Court reported in *SUBASH PARBAT SONVANE V. STATE OF GUJARAT*⁴ on the proposition that mere acceptance of money is not sufficient for convicting the accused under Section 13(1)(d)(i) of the Act. It further held that there must be evidence on record that the accused 'obtained' any amount by corrupt or illegal means. In that case also, the complainant did not support the case of the prosecution on the points of demand and acceptance and evidence of panch witness is not clear that there was any demand by the accused and amount was paid to him by the complainant.

19. The judgment of the Apex Court reported in *BABU LAL BAJPAL V. STATE OF UP*⁵ is to the effect that the defence that the complainant tried to thrust money from the pocket of the accused, who resisted and had thrown the amount on floor is supported by the independent witnesses and when no motive for demanding or accepting bribe proved and when no bill of complainant contractor was pending with the accused, the acquittal of the accused by the trial court is justified.

20. The ruling of the Full Bench of the Supreme Court reported in *B.Jayaraj v. State of Andhra Pradesh*⁶, is to the effect that when the complainant does not support the prosecution case

⁴ AIR 2003 SC 2169

⁵ 1994 Cri.L.J.1383

⁶ 2014(2) ALD (CrL.) 73 (SC)

insofar as the demand by the accused is concerned and when prosecution does not adduce any other evidence to prove the demand, mere demand of gratification cannot be held to be proved only on the basis of the complaint filed and evidence of panch witness and mere possession and recovery of tainted money from the accused, without proof of demand.

21. The relevant portion of the ruling of the Supreme Court in Crl.A.No.1163 of 2017 between *Mukhtiar Singh v. State of Punjab* reads as follows:

“This Court thus in P.SATYANARAYANA MURTHY VS. DISTRICT INSPECTOR OF POLICE, STATE OF ANDHRA PRADESH AND ANOTHER [(2015) 10 SCC 152] on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (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 6 (2014) 13 SCC 55 two sections of the Act. 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 and 13 of the Act would not entail his conviction thereunder.” (emphasis supplied)

22. Hence, from the above rulings, what can be gathered is that when the basic ingredient of the alleged offences that is demand of bribe by the accused is lacking and when there is

scanty evidence with regard to the recovery of money from the accused, it would not be safe to convict the accused.

Accordingly, point No.1 is answered in favour of the appellant.

POINT No.2: -

23. In view of the conclusion reached by this court on point No.1, this court holds that the judgment of the court below cannot be sustained and accordingly, point No.2 is answered.

POINT No.3: -

24. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant in judgment, dated 22.12.2006, passed in C.C.No.9 of 2001, by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Courts, 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.

T. RAJANI, J

December 11, 2018
LMV