THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.851 OF 2006

JUDGMENT:

This appeal is filed by the State represented by ACB, Nizamabad Range, Nizamabad assailing the judgment dated 25.08.2003 passed in C.C.No.3 of 2000 on the file of the Court of Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad, wherein the respondents 1 and 2/ Accused Officers 1 and 2 were acquitted of the charges levelled against them under sections 13(1)(c)&(d)(i) read with 13(2) of Prevention of Corruption Act, 1988 and the third respondent/Accused Officer No.3 was also found not guilty for the offence under Section 12 of Prevention of Corruption Act, 1988 and Section 420 IPC read with Sec.34 IPC.

2. The factual matrix that led for filing of the present appeal is as follows: On 18.01.1999, P.W.10 Inspector of Police, Medak, registered a case in RC No.1/ACB-NZB/99 against the respondents/ Accused Officers 1 to 3 under Section 12, 13(1)(c) & (d) (i) read with 13(2) of Prevention of Corruption Act 1988 and also Sections 409, 420 read with 34 IPC and conducted investigation. During the course of investigation, it is revealed that Accused Officer – 1 Y.Anjaiah, worked as Deputy Executive Engineer (I.B), Haldivagu Project Sub Division at Shankarampet, Siddipet, from 12.06.1995 to 07.11.1997. Accused Officer -2 Putta Siddiah, worked as Assistant Engineer (I.B.) under A.O.-1 in Haldivagu Project at Shankarampet/Siddipet during the above said period. Accused No.3 is the Proprietor of M/s.Srinivasa Petrol Suppliers. As per the prosecution version, the petrol Jeep bearing No.AAG 4535 was allotted to A.O.1 for the purpose of inspection of

irrigation projects. Accused Officer No.1 with the active connivance of A.O.2 and Accused No.3 created false petrol bills to a tune of Rs.60,897/- and misused the government funds. The Inspector of Police examined the prosecution witnesses and recorded their statements. He also obtained necessary orders for prosecution of A.Os.1 and 2. After completion of investigation, he laid charge sheet against Accused Officers 1 and 2 for the offences under Section 13(1)(c)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, and against Accused No.3 under Section 12 of P.C. Act read with Section 420 r/w 34 IPC. Principal Special Judge for SPE & ACB cases at Hyderabad taken the case on file and numbered the same as C.C.No.3 of 2000.

3. On appearance of the accused, the learned Principal Special Judge for SPE & ACB Cases, Hyderabad, framed charges against the Accused Officers 1 and 2 under Section 13(i)(c)(d) read with 13(2) of Prevention of Corruption Act, 1988 and under Section 12 of P.C. Act and Section 420 read with Section 34 IPC against Accused Officer No.3 and all the accused pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused, on behalf of the prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P15 were marked. On behalf of the defence, D.Ws.1 to 3 were examined and Exs.D1 to D3 and Ex.X1 and X2 were marked.

5. After completion of the prosecution evidence, the Accused Officers were examined under Section 313 Cr.P.C., with reference to incriminating material deposed against them by the prosecution witnesses. The accused officers denied the same.

6. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the Accused Officers were not found guilty for the offence under Section 13(1)(c) & (d)(i) read with 13(2) of Prevention of Corruption Act, 1988 and U/s.12 of PC Act and 420 IPC read with Sec.34 IPC and acquitted them. Feeling aggrieved by the judgment of the trial Court, the State, A.C.B.Nizamabad Range, Nizamabad, preferred the present appeal.

7. Heard the learned Special Public Prosecutor/standing counsel for SPE & ACB cases and the learned counsel for the respondents.

8. The learned Special Public Prosecutor Sri T.L.Nayan Kumar submitted that the trial Court has not considered the oral testimony of P.Ws.1 to 4 in right perspective and acquitted the respondents - Accused Officers 1 to 3. He further submitted that the trial Court acquitted the Accused Officers 1 to 3 on assumptions and presumptions. He further submitted that the trial Court failed to consider the fact that the jeep bearing No.AAG-4535 was not roadworthy at the relevant point of time. He further submitted that the trial Court failed to consider that A.O.1 with the help of A.O.2 created false petrol bills, thereby misappropriated the government money to a tune of Rs.60,897/-He further submitted that the findings recorded by the trial Court are not sustainable either on facts or in law.

9. Per contra, learned counsel for the respondent Nos.1 and 2 strenuously submitted that the prosecution miserably failed to prove that the jeep No.AAG 4535 was off the road at the relevant point of time. He further submitted that the trial Court rightly considered the discrepancies in the testimonies of P.Ws.1 to 3. He further submitted that P.W.1 deposed false against A.O.1 in view of previous disputes between them. He further submitted that there is a delay of two years in lodging the complaint and the same was considered by the trial Court in right perspective. The learned counsel for respondent No.3 submitted that respondent No.3 supplied petrol to the vehicle in question on the coupons issued by A.Os.1 and 2 and respondent No.3 has nothing to do with the acts of A.Os.1 and 2.

10. It is needless to say that the appellate Court shall not lightly interfere with the judgment of the trial Court, more particularly in acquittal cases. It is a settled principle of law that the prosecution has to establish the guilt of the accused beyond all reasonable doubt. The entire case of the prosecution revolves around whether the government jeep bearing No.AAG-4535 was kept idle during the relevant point of time.

11. Let me consider the facts of the case on hand in the light of the above legal principle. P.W.1 is the driver, P.Ws.2 and 3 are the Work Inspectors, P.W.4 is the Motor Vehicle Inspector, P.W.5 is the Superintendent, P.W.6 is the Senior Assistant, Irrigation Department, P.W.7 is the Attender, P.W.8 is the Assistant Engineer, P.W.9 is the Section Officer, and P.W.10 is the Investigating Officer.

12. In order to prove the guilt of the Accused Nos.1 to 3, the prosecution has to establish that the vehicle bearing No.AAG-4535 was kept idle at the relevant point of time. As seen from the testimony of P.Ws.1 to 10, at the relevant point of time, A.O.1 worked as Deputy Executive Engineer and A.O.2 worked as Assistant Engineer from 12.06.1995 to 17.11.1997 in the Sub-division Office, Haldivagu Project of Medak district. As seen from the testimony of P.Ws.1 to 3 and D.Ws.1 to 3, the government allotted jeep No.AAG 4535 to A.O.1, who worked as Deputy Executive Engineer. One Krishnamachary worked as Deputy Executive Engineer of Haldivagu Project prior to A.O.1. As per the testimony of P.W.4, he inspected the jeep bearing No.AAG 4535 on 08.04.1999, basing on Ex.D1 requisition letter and issued Ex.P2 report. Admittedly, the vehicle was inspected two years after the relevant point of time. In the cross-examination, P.W.4 in unequivocal terms deposed that he has not taken the samples of lubricants of the jeep for testing. He further deposed that he has not opened the gear box of the vehicle. If the testimony of P.W.4 is taken into consideration, the vehicle was not roadworthy as on 08.04.1999. There is no whisper in the testimony of P.W.4 that the vehicle was not roadworthy during the period from 12.06.1995 to 07.11.1997. As seen from the testimony of P.W.1, he has taken the vehicle from Medak to Siddipet in the month of September 1995. His testimony further reveals that he got repaired the vehicle in the month of September 1995. As seen from the testimony of P.W.10, one Krishnamachary, who worked as Deputy Executive Engineer spent an amount of Rs.5000/- on 31.03.1995 for the repairs of the jeep. His testimony further reveals that on

21.02.1996, an amount of Rs.7,680/- was paid to General Automobiles and Repairs, Medak vide cheque bearing No.346616. The testimony of P.W.8 also reveals that Krishnamachary, the then Deputy Executive Engineer spent an amount of Rs.5000/- for the purpose of repairs of the vehicle and paid the said amount by way of cheque bearing No. 347550. He denied the suggestion that an amount of Rs.4012/- was paid by way of cheque bearing No.246983 to Agro Industrial, Nizamabad, for purchase of tyres to the jeep. The material placed before the Court clinchingly establishes that in the year 1997 an amount of Rs.4000/- was spent for purchase of tyres to the jeep bearing No.AAG 4535. If the jeep was not in a fit condition, where is the necessity to purchase tyres in the year 1997. This aspect was not properly explained by the prosecution. As per the testimony of P.Ws.5, 6 and 8, they have paid the above said amounts after proper scrutiny of the bills.

13. A perusal of the record clearly reveals that no audit objection was taken at the time of processing the above referred bills. This aspect also negates the contention of the prosecution that the jeep bearing No.AAG 4535 was not in fit condition at the relevant point of time. P.Ws.2 and 3 are the work inspectors. P.Ws.2 and 3 in the cross-examination categorically admitted that A.O.1 used to visit the work spot on the jeep. There is no whisper in the testimony of P.Ws.2 and 3 that the jeep bearing No.AAG 4535 was not in fit condition at the relevant point of time. There is no whisper in the testimony of these two witnesses that the jeep bearing No.AAG 4535 was kept idle during the relevant point of time. D.W.1 is the Chief-Engineer, Sriram Project, Stage-I. As per the testimony of D.W.1, he travelled along with A.O.1 on the jeep

bearing No.AAG 4535 for the purpose of inspection of the ongoing irrigation projects. P.W.1 joined in service as a driver in the year 1982. His testimony reveals that he never prepared log book at any point of time. His testimony further reveals that the Dy.Executive Engineer(A.O.1) used to prepare log book(M.O.1).

14. It is not elicited from the prosecution witnesses that as per the recitals of log book, the jeep in question was kept idle during the relevant point of time. As per the testimony of D.W.2, he along with A.O.1 travelled in the jeep bearing No.AAG-4535 for inspection purpose. His testimony further reveals that the jeep bearing No.AAG-4535 got repaired during the year 1996-97. As seen from the testimony of D.W.1, he issued proceedings dated 16.09.1995 permitting D.W.2 to drive the jeep bearing No.AAG-4535. The testimony of D.Ws.1 and 3 clearly reveals that P.W.1 never worked as a driver of the jeep bearing No.AAG-4535 at the relevant point of time. In the cross-examination, P.W.1 in unequivocal terms admitted that he deposed before the Lokayuktha that A.O.1 used the vehicle in question for his personal purposes. This itself indicates that the jeep bearing No.AAG 4535 was not kept idle during the relevant point of time. The testimony of P.Ws.5 and 6 clearly reveals that A.O.2 issued petrol coupons. Their testimony further reveals that those coupons were submitted in M/s.Srinivasa Petrol Suppliers for the purpose of purchasing petrol. It is not the case of the prosecution that vehicle bearing No.AAG 4535 was not allotted to A.O.1 at the relevant point of time. Except the stray sentence in the evidence of P.W.1, there is no other evidence, much less cogent and convincing evidence to establish that the jeep bearing No.AAG 4535 was kept

idle during the relevant point of time. In the cross-examination P.W.10 admitted that the entries in the log-book are proper. He further deposed that Ex.P6 coupons were issued in the name of M/s.Srinivasa Petrol Suppliers, Medak. If the vehicle was kept idle, where is the necessity for A.O.1 to prepare log book. P.W.10 lodged a complaint basing on his discrete enquiry. P.W.10 himself admitted about the repairing of the jeep bearing No.AAG 4535 in the year 1997. There is no whisper in the testimony of P.Ws.5, 6, 7 and 8 that the jeep bearing No.AAG4535 was kept idle during the relevant point of time. The material placed before the trial Court falls short to establish that the jeep bearing No.AAG 4535 was off the road during the relevant period. When the vehicle was being used for the purpose of inspection, drawing of petrol is inevitable. It is a known fact that no vehicle can be used without petrol.

15. In the light of the above discussion, I have no hesitation to hold that the prosecution miserably failed to prove the guilt of respondent Nos.1 to 3 for the offences punishable under Section 13(1)(c)&(d)(i) r/w 13(2) of Prevention of Corruption Act, 1988, and U/Sec.12 of Prevention of Corruption Act, 1988 and Sec.420 IPC r/w Sec.34 IPC. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to prove the guilt of Accused Officers 1 and 2 for the offences punishable under Section 13(1)(c)&(d)(i) read with 13(2) of Prevention of Corruption Act, 1988 and also to prove the guilt of Accused No.3 for the offence under Section 12 of Prevention of Corruption Act, 1988 and Section 420 IPC read with Sec.34 IPC beyond all reasonable doubt.

16. The findings recorded by the Court below are supported by evidence much less legally admissible evidence. There is no flaw much less legal flaw in the judgment of the trial Court, which warrants interference of this Court. Viewed from any angle, there are no grounds much less valid grounds to interfere with the judgment of the trial Court. The appeal lacks merits and *bona fides* and the same is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date:18.01.2018
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