

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1263 OF 2007

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 21.09.2007, passed in C.C.No.30 of 2003, by the Court of Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, by virtue of which the trial court convicted the accused for the offence under Sections 7 and 13(1)(d) r/w 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.1,000/- in default to suffer simple imprisonment for three months for the offence under Section 7 of the Act and also to undergo Rigorous Imprisonment for a period of one year and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months for the offence under Section 13(1)(d) r/w 13(2) of the Act.

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

The complainant was running a firm 'water aid systems' in Kurnool, supplying water supply materials to gram panchayats in Kurnool Districts. In month of June, 2002 he supplied a total of 17 items to Chinnamalkapuram Gram Panchayat on the oral instructions of Panchayat Secretary of the said Panchayat, without work order. Thereafter, on repeated requests of the

complainant, LW2, who is the Lecturer in Commerce, Silver Jubilee Government College, Kurnool, issued work order on 11.08.2002 for the supply of 7.5 HP submersible pump set, panel board and two items valued Rs.44,023/-, which were already supplied. About one week prior to 27.09.2002, the complainant approached the accused in his office and requested to record the M-Book as per the work order, as the material was already supplied. On that, the accused demanded an illegal gratification of Rs.4,400/- at the rate of 10% of bill amount. Even though the complainant expressed his inability to pay the bribe, the accused did not oblige the request of the complainant. Thereafter, again on 27.09.2002, the complainant approached the accused at his office at Dhone, handed over the work and invoice bill to the accused and requested to record the M.Book and forward the bill to the Deputy Executive Engineer. Then the accused received the said documents and again demanded an illegal gratification of Rs.4,400/-, for recording the M-Book and to submit the same to the Deputy Executive Engineer (PR) for further action. In spite of repeated requests made by the complainant, the accused insisted for payment of some bribe amount and as there is no other go, the complainant intended to pay the amount demanded by the accused, for which the accused directed the complainant to pay the bribe amount on 28.09.2002 morning at his office. Thereafter, the complainant lodged the written complaint before the Deputy Superintendent of Police (DSP), ACB, Kurnool Range, on 27.09.2002 at 06:00 PM, who registered the same as case in Crime No.12/ACB-

KUR/2002 under Section 7 of the Prevention of Corruption Act and took up investigation. During investigation, the DSP, ACB, secured the mediators; laid trap against the accused in the office of the accused; conducted sodium carbonate solution test; seized the relevant materials and documents relating to the case, along with two hundred rupee notes, which were taken back by the complainant from the tainted currency.

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) r/w 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. During trial, PWs.1 to 10 were examined and Exs.P1 to P15, and MOs.1 to 9 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, DW.1 was examined and Ex.D1 was marked.

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 findings of the court below went wrong in appreciating the evidence on record or any assessment of the same by the court below, which resulted in gross miscarriage of justice. The findings of the court below are vitiated due to errors apparent on the face of record and due to misreading of

evidence, which resulted in erroneous and unsustainable findings. The findings of the court below are also vitiated due to the double standards of appreciation of evidence only to favour the prosecution, resulting in gross miscarriage of justice. The findings and conclusions of the court below are not based on the evidence on record and are perverse and hence liable to be set aside. The court below ought to have seen that there is no evidence at all on record in support of the alleged demand and acceptance of bribe by the appellant. The court below grossly erred in totally ignoring the evidence of the complainant, who categorically deposed that the appellant did not demand or accept any bribe from him and so it ought to have acquitted the appellant. The court below ought to have seen that no money was recovered from the appellant and the test on him proved negative, establishing his innocence and negating the alleged demand and acceptance of bribe. The court below should have acquitted the appellant as the complainant himself admitted that there was no demand or acceptance of bribe from him coupled with the fact that the measurements were found already recorded in M.Book Ex.P2 as early as on 19.08.2002 and that nothing was pending relating to the complainant. The court below grossly erred in treating the recitals in the complaint and pre trap and post trap proceedings as substantitve evidence, while rejecting the entire evidence on record in favour of the appellant, resulting in gross miscarriage of justice. The court below having held that the appellant gave spontaneous explanation and denied about demand or acceptance of bribe as

incorporated in Ex.P8, which was admitted by PWs.2 and 9, grossly erred in convicting the appellant without any other evidence. The court below grossly erred in summarily rejecting the entire material and direct evidence of PWs.3 to 6 and 8 and also DW1, which was consistent with the evidence of the complainant, without any justification, resulting in gross miscarriage of justice. The court below failed to see that the prosecution did not come forward with clean hands and truth and deliberately suppressed material facts in order to falsely involve the appellant. The court below ought to have seen that the appellant proved his case not only by preponderance of probabilities and also established his innocence beyond a shadow of doubt. The court below ought to have seen that Ex.P12 sanction order was issued in routine and without application of mind at the request of the DG, ACB and, therefore, it is invalid. The court below grossly erred in not considering any of the reported judgments submitted by the appellant as can be seen from the judgment.

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

7. The counsel for the appellant contends that the alleged demand made by the accused in this case is not proved by the prosecution, as PW1, who is the complainant, did not support the case of the prosecution and as there is no other evidence, which points towards the guilt of the accused.

8. The Public Prosecutor, on the other hand, submits that the evidence of PW2 would suffice to prove that the accused made a demand and that with the help of the said evidence, the guilt of the accused can be concluded.

9. Based on the above arguments and the material on record, the following points are framed for consideration:

1. Whether the prosecution could prove the demand made by the accused and if not, whether proof of acceptance would suffice to render the verdict of guilt to the accused and whether in this case there is any proof of acceptance.

2. Whether the judgment of the court below is sustainable.

3. To what relief.

POINT No.1: -

10. The Public Prosecutor relies on a judgment of the Apex Court reported in *M.Narsinga Rao v. State of A.P.*¹ in support of his contention that proof of acceptance by the accused would suffice. The Supreme Court explained the word 'may presume' and 'shall presume' and discussed about the illustration (a) to Section 114 of the Indian Evidence Act, 1872, which allows the court to presume that 'a man, who is in possession of the stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.' It held that said illustration can profitably be used in the context therein as well

¹ 2001 Cri.L.J.515

when prosecution brings reliable materials that appellant's pocket contains phenolphthalein smeared currency notes for Rs.500/- when he was searched by the DSP, ACB. It was further held that that by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. It observed that the other circumstances, which have been proved in this case and those preceding and succeeding the searching of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes. The court also observed that the presumption under Section 4(1) of the P.C.Act is a rebuttable presumption.

Hence, from the above, it can be understood that if there are proved facts, which would help the court to draw factual presumption that the appellant willingly received the currency notes, certainly, the accused can be held guilty.

11. The counsel for the appellant relies on a subsequent judgment of the Supreme Court reported in *P.Satyanarayana Murthy vs. State of A.P.*², which was rendered by the three judges of the Supreme Court, wherein it was held that the proof of demand of illegal gratification is a gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) and in the absence thereof, the charge thereof would fail. It also held that mere acceptance of any amount allegedly by way of illegal gratification

²

(2015) 10 SCC 152

was recovered 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 and as a corollary, the 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 Section 7 or 13 of the Act would not entitle his conviction thereunder.

12. The other ruling relied upon by the counsel for the appellant is reported in *B.Jayaraj v. State of Andhra Pradesh*³, which is also rendered by three judges of the Supreme Court, is also to the same effect. It was also held that for a presumption under Section 20 to be drawn, precondition is that gratification should be received for doing or not doing official act and it cannot be raised in the absence of proof of acceptance. It held that proof of acceptance of gratification is an essential pre-condition for raising a presumption under Section 20.

Hence, from the above ruling, it can be understood that the presumption under Section 20 can be invoked on the proof of acceptance of gratification and since the presumption is rebuttable, the burden would lie on the accused to prove otherwise.

13. The ruling relied upon by the counsel for the appellant reported in *N.Sunkanna v. State of Andhra Pradesh*⁴, is a case in which the complainant himself had disowned his

³ 2014(2) ALD (CrL.) 73 (SC)

⁴ 2015 AIR SCW 6764

complaint and turned hostile. The Supreme Court observed that there is no other evidence to prove that the accused had made any demand and without proof of demand, the same would not constitute the offence under Section 7. It was further held that unless there is proof of demand of illegal gratification, proof of acceptance will not follow, legal presumption under Section 20 hence cannot be drawn.

14. In the light of the above rulings, the evidence of the witnesses has to be evaluated with close circumspection and strict scrutiny. PW1, who is the complainant, did not support the case of the prosecution. According to him, he was running a firm water aid system in Kurnool. In the month of June, 2002, the Panchayat Secretary asked him to supply water supply materials to the Chinna Malkapur gram panchayat. He supplied 17 items of water supply materials. The said panchayat secretary acknowledged the same. He did not issue any work order to him and he made a repeated request for issuing work order and at last on 11.08.2002 he gave work order as per the estimate prepared by the accused, who was the Assistant Executive Engineer, (PR), RWS, Dronachalam, at that time. On the next day, he gave work order and invoice to the accused and the accused promised to verify material supplied to him by going to the Chinna Malakapur gram panchayat. After that he talked with the accused over telephone. The accused informed him that he did not verify the material and asked him not to ring up frequently and he also told him that he will inform him after he verifies the same. After one week prior to 27.09.2002,

he went to the office of the accused to meet him but he could not meet him as he was not present in his office. Then he enquired with the staff available there as to whether the accused gave any instructions to them with regard to his supplying material and also about his measurement book. They informed him that the accused did not give any instructions to them. They also told him that the M Book was not given to them by the accused. Again on 27.09.2002 he went to the office of the accused and found that he was not there and he was waiting for the accused at his office. One of the staff members of the accused asked him about his coming to the office. When he disclosed the reason, the said person asked him whether he paid any amount to the accused. He replied that no amount was paid by him to the accused. Then he advised him to pay some amounts to the accused to get the work done. Then PW1 informed him that he was not willing to pay any amount to the accused as the accused didn't ask him. The said person told him that he would get the work done if the amount is paid to him. Not willing to pay any amount to the said person, he returned to his house at Kurnool. Then he went to the ACB Office, Kurnool and gave a report. Thereafter, pre trap proceedings were prepared. At about 08:40 AM on 28.09.2002, the staff to the DSP, ACB and himself went to the office of the accused and the accused was not present. They waited at about 10:30 or 10:40 AM, the accused came to the office, then he enquired with the accused about the bills and M Book. The accused asked him about the mediator Subba Rao, who accompanied him. Then he

replied that he asked the said Subba Rao about his coming along with him. Then Subba Rao informed that he gave loan of Rs.50,000/- to PW1 and that he was postponing the repayment of the said amount to him and he wanted to ascertain from the accused about his getting bill from the Chinna Malkapuram Gram Panchayat. The accused informed said Subba Rao that he would get the money within two or three days. Then the accused asked Subba Rao to go away and thereby, the accused went out. The accused informed him about his late coming to the office and told him that he could not have breakfast and so saying they both went to the outside and had their tiffin and returned to the office of the accused. Then, he asked the accused about the measurement book. He informed him that it was ready with him. The accused also informed him that some variations were there in his bill and the accused showed him the measurement book. The accused called one person and asked him to prepare the contingent bill by giving the measurement book to him. Then the said person informed him to take the contingent bill after preparing the same. The said person, who met him in the DE's office on the previous day, was found sitting in the DE Office. The said person asked him whether he brought the money, he answered positively. The said person pulled the table drawer in the room of Deputy Executive Engineer and asked him to keep the amount in the said table Drawer. Accordingly, he took out his amount from his shirt pocket. When he was about to keep the said amount, the said person asked him to count the said notes. Accordingly, he counted the said amount of Rs.4,400/-.

Then he removed Rs.200/- from the said currency notes as 10% of the said bill comes to only Rs.4,200/- as said by the said person and the tainted currency of Rs.4,200/- was kept by him in the said table drawer. Some papers were also there in the said drawer. Then he took the measurement book and the file consisting of contingent bill and other papers. Then he came to the accused and informed about collecting the measurement book and file and the accused informed him to go and get the check measured with the Deputy EE in the measurement book. Then he came out and gave the pre arranged signal to the DSP, ACB. In the cross-examination, he denied the suggestion that the accused demanded him whether he brought the demanded bribe amount.

15. By virtue of the evidence of PW1, the case of the prosecution that the accused demanded amount from PW1 gets dismantled. The Public Prosecutor contends that even if there is no demand proved through the evidence of PW1, the same stands proved through the evidence of PW2, who is the person who accompanied PW1 when he was going to the accused to pay the bribe amount. The evidence of PW2 shows that after going into the office of the accused, the accused enquired as to who he was and he gave the version, as stated by PW1. The accused confirmed that PW1 has to get some amount in respect of water supply materials from the office and so saying asked PW2 to go out. When he was about to go out, the accused asked PW1 whether he brought the demanded bribe amount.

16. This is the evidence on which the prosecution relies, in support of its contention that the demand of the accused stands proved. In the judgment reported in *P.Satyanarayana Murthy's case* the Supreme Court dealt with similar factual situation. In the said case also the complainant turned hostile. The panch witness supported the case of the prosecution. The panch witness was examined as PW1 therein and the evidence of PW1 was also discussed in the said judgment. PW1 therein also spoke on the same lines as that of PW2 in this case. In that case also, the appellant enquired with the complainant whether he brought the amount, which he had directed him to give on the previous day. The Supreme Court declined to consider the said evidence as proving the demand of the accused and it held that even if the evidence of panch witness is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Sections 7 or 13(1)(d)(i) and (ii) of the Act had been proved. It further held that to hold on the basis of record that the culpability of the accused, appellant for the said offence has been proved, would be an inferential deduction which is not permissible in law. It observed that the testimony of PW1 therein does not reproduce the demand allegedly made by the appellant to the complainant, which can be construed to be one as contemplated in law, to enter a finding that the offences against the appellant have been proved beyond all reasonable doubt. Hence,

the evidence of PW2 is only that the accused asked PW1 whether he brought the amount, cannot help the prosecution.

17. Apart from the above fact, the evidence would reveal that the test conducted to the fingers of the accused did not yield positive result. The amount was not found in possession of the accused and it was found in the drawer of the Deputy Executive Engineer, who is not the accused. The version given by the accused on the spot corroborates the evidence of PW1. The demand being not proved and the amount being not recovered from the accused and the Phenolphthalein test not turning positive and the amount being recovered from the drawer of some other official, not being the accused, would all throw ample doubt on the case of the prosecution.

18. The version of the accused is spoken to by PW9, who is the DSP, ACB, Kurnool, who investigated into the case. Apart from the defence of the accused, being proved through the evidence of the prosecution witnesses themselves, the accused examined DW1 on his behalf. The evidence of DW1 is that he is a resident of Pothugalli village. On the date of trap, himself and one P.Ranganna, Sarpanch of Yadadinna village went to the office of the Deputy EE, whereas Ranganna came to the office to meet the accused, as his village comes under the jurisdiction of the accused. By the time they went to the office, PW3 was present in the room but the accused was not present. He came to know that the accused went outside the office. While he was talking with PW3 in the office room, the accused and PW1 came to the

office room, then he wished the accused. Then PW1 enquired with the accused about his work measurement in M Book. Accused told him that the measurements were taken long back, in the month of August itself and why he was asking about it now. Then PW1 asked the accused that he wanted to see the file and book. Then the accused secured the file and M Book and perused the same after PW1 took them to hand over to the Deputy EE. So saying PW1 left from that room. While they were talking with the accused in that room two persons entered into that room and enquired as to who is Ram Mohan Reddy and then the accused disclosed his identity and he asked about the identity of those persons. They represented that they are from the ACB and then they asked the accused to come to the room of the Deputy Executive Engineer, where the DSP ACB Kurnool was sitting. The ACB officials enquired the name of DW1 and noted his name. He narrated all the facts of the said person.

19. Whatever be the strength of the evidence of DW1, which may be at the instance of the accused, the lapses pointed out in the case of the prosecution would suffice to acquit the accused. The burden laid on the prosecution for the purpose of invoking the presumption under Section 20 of the P.C.Act is not discharged and neither the demand nor the acceptance on the part of the accused, are proved.

20. In view of the above legal and factual situation, this court opines that the prosecution failed to prove the alleged demand made by the accused and accordingly, point No.1 is answered.

POINT No.2: -

21. In view of the conclusion arrived at by this court under point No.1, this court opines that the judgment of the court below cannot be sustained and the same is accordingly set aside.

POINT No.3: -

22. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant in Judgment, dated 21.09.2007, passed in C.C.No.30 of 2003, by the Court of Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Consequently, the appellant is acquitted of the charge 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

November 12, 2018
LMV