SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.389 of 2007

JUDGMENT:

This appeal is directed against the judgment of the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.35 of 2002 dated 15.03.2007 convicting the appellant-accused for the offence under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

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

The complainant, who is a contractor of Madikonda village of Warangal District, was awarded the contract work at Nanchari Madur village by Rural Water Supply Department for laying pipeline for water supply. The complainant entered into an agreement on 16.07.2001 and completed the work. The concerned Junior Engineer recorded the measurements in the Measurement Book and the Deputy Executive Engineer also check measured it. On 17.09.2001, the Executive Engineer checked the same and issued pass order. The accused has to send the file pertaining to the complainant, to the Pay and Accounts Officer (PAO), Chinthagattu village of Warangal for making payment for the work executed by the contractor. But the accused kept the file pending and on repeated requests by the complainant, the accused demanded percentage on the bill and demanded Rs.1,000/- for sending the file to PAO, to get the cheque. The complainant was not willing to pay bribe amount. Hence, he approached the ACB authorities and lodged a written complainant with the Deputy Superintendent of

Police, ACB, who, after receiving the report, conducted the pre-trap proceedings.

On the date of trap, which is 27.09.2001, they proceeded along with the complainant. The complainant went inside the chambers of the accused, along with a mediator, while others took vantage positions outside. The complainant, after few minutes, relayed the pre-arranged signal, on receiving which, the trap party rushed into the office of the accused and found him sitting in the chair. The DSP disclosed his identity and introduced the mediators to the accused. The chemical test was conducted, which turned positive on the right hand fingers of the accused. The amount of Rs.1,000/- was produced from his shirt pocket and the same was seized. The mediatornama was drafted, incorporating the explanation given by the accused. After concluding the investigation, the charge sheet was filed for the same offences.

The case was taken on file by the Court below and charges were framed for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. After recording the plea of not guilty by the accused, the Court below conducted trial of the case and P.Ws.1 to 7 were examined and Exs.P1 to P12 and M.Os.1 to 10 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.Ws.1 to 5 and got marked Exs.X1 to X3. The Court below, after considering the evidence on record, passed the impugned judgment.

3. The appeal is preferred on the grounds that the Court below erred in coming to the conclusion that the accused demanded the amount; it failed to see that after delivering the cheque to the complainant, he thanked by shaking his hands with the appellant and as such, phenolphthalein crystals came into contact with his hands; it failed to see that the appellant proved his case by preponderance of probabilities and it erred in drawing presumption under Section 20 of the Prevention of Corruption Act.

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

5. The counsel for the appellant contends that the evidence of P.W.1 that he requested the accused to send the pass order to PAO by meeting him within one week of the pass order stands belied by virtue of Exs.X1 and X3, which contains the true impression of the BTR. He contends that as per Ex.X3, the pass order, which was drafted on 17.09.2001, it was sent to PAO on 18.09.2001 itself and the signature of the concerned in the PAO is present on Ex.X3, with date underneath the signature and hence, the evidence of P.W.1 has to be discarded in toto. He also submits that the complainant is a quarrelsome person and he did not want any deductions to be made in his bill, which are compulsory and hence, he had a grouse on the accused for making deductions and hence, this false complaint.

6. The learned Public Prosecutor, on the other hand, submits that the demand of bribe is made for handing over cheques, which were

received from PAO and the same is proved beyond all reasonable doubt.

7. Based on the above arguments, the following points come up for consideration:

1. Whether the evidence of P.W.1 is trustworthy and whether his evidence is affected by Exs.X1 and X3.
2. Whether the judgment of the Court below is sustainable.
3. To what relief.

POINT No.1:

8. The evidence of P.W.1 is that, after entering into the agreement on 16.07.2001, with Rural Water Supply Department, for laying pipeline for water supply for Nancharimadu village, he completed the work. On 28.08.2001, the concerned Junior Engineer visited the spot and noted down the measurements of the contract work done by him and later, the concerned DEE check measured the measurements and the same is recorded by the JE. On 17.09.2001, the concerned Executive Engineer, after verifying the measurement book, passed an order for payment of the bill amount in favour of Sri Ch. Venkateshwara Rao, who is none other than the accused, who had to send the pass order etc. to PAO. Within one week of the said pass order, P.W.1 met the accused in his office at about 10.30 or 11.00 AM and asked him to send the pass order. The accused demanded to pay bribe amount of Rs.3,000/- for sending the same. P.W.1 expressed his inability saying that he is indebted to others. The accused reduced the amount from Rs.3,000/- to Rs.1,000/- and on his word that he would pay Rs.1,000/-, the accused forwarded the said pass orders and other

papers to PAO. On 26.09.2001, he came to know that his cheque was prepared in the said office. At about 10.30 AM, he made a telephone call to the office of the accused and the accused lifted the phone and informed him to pay Rs.1,000/- as agreed by him. He was not inclined to pay the same and hence, he approached the office of DSP, ACB, Hanumakonda.

9. Speaking about the events on the date of trap, P.W.1 stated that he, along with L.W.2, went in a car to the office of the accused, while the DSP and others followed them in another car. Himself and L.W.2 went into the office of the accused. He noticed that L.W.4 was dialling the telephone in the office room of the accused and there was another person present, who was sitting in front of the accused. P.W.1 asked the accused to give his cheque and the accused demanded Rs.1,000/-. Then P.W.1 took out the tainted amount and gave it to the accused and the accused took it with his right hand and kept the amount in his left side shirt pocket. After that, the accused handed over the cheque and after receiving the cheque, P.W.1 went out of the room and relayed the pre-arranged signal, then the trap party proceeded into the chamber of the accused. The DSP asked him to wait outside and after one hour, he was called inside and his version was also recorded and the cheque was also seized. The original cheque was returned to him by retaining a Xerox copy.

In the cross-examination, he stated that he approached the accused three or four days after the Executive Engineer made the pass order and requested him to send the bill to PAO. The accused did not accede to the request and stopped the bill for three or four days.

This part of his cross-examination, which stands to be an assertion of what he stated in the chief examination, is taken as a ground to contend that the accused is speaking falsehood.

10. A perusal of Ex.X1 shows that the pass order was prepared on 17.09.2001 itself. Ex.X3 shows that it was sent to PAO on 18.09.2001. The initials of Pay and Accounts Section show the date as 18.09.2001. By virtue of Ex.X2 the accused stands probabilising his version that there was no delay on his part to send the pass order to the Pay and Accounts Section.

11. The counsel for the appellant submits that the complainant is a troublesome person and that the accused informed that deductions from his bill, towards income tax and sales tax, need to be made and he was not willing for the same and he raised a quarrel and on the instructions of the EE, he sent the bill without any deductions on 18.09.2001 but the PAO returned the bill on the ground that no deductions are made. Hence, after making deductions on the same day, it was sent to PAO.

12. D.W.3 was the Senior Assistant in the office of the Executive Engineer, RWS Division, Hanumakonda during the relevant period, who knows the accused. According to him, on 16.09.2001, during evening hours he received Ex.X2 file from the drawing branch of their office for scrutinizing the bills and also obtaining pass orders. He had put up office note on 17.09.2001 and in page No.19 of Ex.X1, the accused in his handwriting proposed deductions in the bill of P.W.1. Thereafter, P.W.1 came to their office and quarrelled with him for the

deduction made by the accused. Then he took P.W.1 to the accused and P.W.1 quarrelled with the accused also. Thereafter, they took P.W.1 to the Executive Engineer, then the EE advised them to prepare the bill as claimed by P.W.1 and that if there is any objection PAO will look into the same. The bill of P.W.1 was sent to PAO on 18.09.2001 itself and the same was returned raising an objection regarding deduction suggested by their office. Thereafter, necessary corrections were made and then the bill was again sent to PAO. The pencil writings on page No.20 of Ex.X1 were written by PAO. He stated that there was no delay on the part of their office in processing and sending the bill of P.W.1 to PAO and according to him, only Accounts branch was responsible for sending the bill of P.W.1 to PA0 and not the accused. He stated that the cheques will be delivered to the contractors by the concerned Senior Assistant and in those days, Sri Mohana Krishna was the Senior Assistant and in the absence of the senior assistant, either on leave or on other duty, the cheques used to be disbursed by the accused not to cause any inconvenience to contractors.

In the cross-examination done by the Public Prosecutor, he stated that the deduction made by the accused in the bill of P.W.1 was also intimated to P.W.1 orally and P.W.1 had seen it.

In view of the fact that there are two endorsements made by PAO, the version of the accused and the evidence of DW3 becomes strengthened and it has to be accepted that the pass order was initially sent without any deductions as requested by the complainant and it was returned for not making deductions and thereafter, the deductions were made and the pass order was resubmitted on the same day to

PAO. Hence, the initial demand made by the accused stands improbabilized.

D.W.5 is the Executive Engineer during the relevant period, who is referred to by DW.3. He stated that after receiving the bills from the Sub-Division office, the bills will be scrutinized by the drawing branch and then the accounts branch. Finally, the bill will be checked by Divisional Accounts Officer and then the bill will be sent to the concerned clerk for entering the same in the register and then the bill will be sent to PAO after making pass order by the Executive Engineer. He stated that he knows the accused and also D.Ws.1 and 2. He spoke about the accused making deduction in the bill of P.W.1 under two heads. On 16.09.2001, he heard some quarrel between the accused and P.W.1 and when the said issue was brought to his notice, he suggested the concerned case worker D.W.3. Since P.W.1 is a violent in nature, thinking that PAO official will certainly deduct the amount from the bill of P.W.1, he suggested D.W.3 to send the bill to PAO. Subsequently, the bill was sent PAO office and the concerned clerk in PAO, made deductions in pencil writing and later the bill was passed.

13. P.W.2, who is the mediator, however, supports the version of P.W.1 with regard to the acceptance of the bribe amount by the accused. He also went to the accused along with P.W.1. He was introduced to the accused by P.W.1 and when he asked the accused whether the cheque was prepared, the accused asked P.W.1 whether he brought Rs.1,000/- as agreed, immediately he took the amount and gave it to the accused.

In the cross-examination, while admitting that after receiving the cheque from the accused, P.W.1 shook his hands with the hands of the accused saying thanks, he denied the suggestion that thereafter, P.W.1 thrusted tainted amount in the shirt pocket of the accused, in spite of resistance made by the accused. As regards handing over the cheque to P.W.1, P.W.2 asserted that it was only after P.W.1 paid the amount that the accused handed over the cheque to P.W.1. Certain interpolations and corrections were pointed out in Ex.P7, which is the mediator proceedings. It shows that the words "*Further the DAO stated that the complainant paid the said Rs.1,000/- when he issued cheque bearing No.296546 dt.26.09.01 and the complainant the said amount as a reward*" appears to have been added. But P.W.2 accepts that he did not add them subsequently. Hence, a doubt is thrown with regard to the correctness of Ex.P7, which was prepared in the presence of P.W.2, who has acknowledged and certified all the corrections made in Ex.P7. But he being not in a position to testify about the said corrections would throw a doubt with regard to the genuineness of Ex.P7. Whatever, the interpolations show that the accused gave an explanation on the spot itself that it was given by P.W.1 as a reward.

14. P.W.3 is a hostile witness to the prosecution, but he testified that on 27.09.2001 at about 11.30 AM he went to the office of the accused and met him there in connection with project report. While he was interacting with the accused, P.W.1 came to the accused and talked to him but he did not hear the conversation.

In the cross-examination, though he turned hostile, he did not wholly support the case of the accused. When he was questioned about the accused following P.W.1 while he was rushing away saying as to why P.W.1 thrusted the amount into the pocket of the accused and that P.W.1 was saying to keep it as reward, he states that he does not remember the same.

15. P.W.4 is the Senior Assistant in the office of Executive Engineer, RWS (PR), Hanumakonda Division, during the relevant period. His evidence is that he received some cheques from PAO's office on 26.09.2001 and made entries regarding the said cheques in Ex.P3 cheque issue register. The cheques were not delivered on that day. On the next day, he delivered some cheques to some concerned contractors and at about 12 Noon, he received phone call from PAO's office Chintagatu and then he handed over the undelivered cheques to the accused together with the concerned register. He observed P.W.1 and the accused talking to each other and he saw P.W.1 giving some amount to the accused saying to keep the amount with him and the accused holding the amount in his hands. He stated that it happened after the cheque was delivered to P.W.1. He was declared hostile at that stage.

In the cross-examination done by the accused, he stated that after P.W.1 had paid the amount to the accused saying to keep the amount with him, the accused followed P.W.1 up to the door saying why he was giving the amount and that P.W.1 left the chambers of the accused without caring the words of the accused. When P.W.1 refused to take back the money, the accused kept the amount in his shirt pocket.

16. D.W.1 is a contractor, who spoke about the events that took place on 27.09.2001. He supported the version of P.W.4 in the cross-examination. D.W.2 is another contractor, who also corroborated the evidence of D.W.1.

17. D.W.4, who is the Superintendent in the PAO Office, Hanumakonda, worked as Senior Assistant in the same office during the relevant period. According to him, attender used to bring bills from RES Division office to their office and they used to enter the bills into a register kept at their office and the person who was bringing the bills used to subscribe his signature in the register, after submitting the bills in their office. They also used to subscribe signatures in the register maintained by the said RWS office to the effect that they received the bills from their office. As seen from the entries in Ex.X3 register at page No.11 Sl.No.31 bill for Rs.3,70,195/- pertaining to P.W.1 Yellaiah was received by their office on 18.09.2011 and in token of receipt of the said bill, Sri Srinivasa Swamy, one of their employees, subscribed his signature at the said entry in Ex.X3. Along with the bill, they received Ex.X1 measurement books. At the time of presenting the said bill by the attender, P.W.1 also accompanied him to their office. He scrutinized the said Ex.X1 M book and noted the proper deduction with pencil, at page No.20 of Ex.X1. He advised the attender to get the said amount of Rs.19,585/- reduced in the bill of P.W.1. The said attender went and got reduced the said amount and presented the bill

on the same day. He put up the bill on 24.09.2011 and it was passed on 26.09.2001 and the cheque was issued on the same day.

19. Hence, from the evidence, the version of the accused gains strong ground. The initial instance of demand, as already observed, stands belied, as the pass order, which was prepared on 17.09.2001 was processed on the same day and was sent to PAO without any delay and it appears that there was return of the bill for making deductions. The said fact would support the evidence of D.Ws.4 and 5. In fact, D.Ws.4 and 5, ought to have been examined on behalf of the prosecution, as they are the concerned persons for passing of the cheques. But, for the reasons best known, they were not cited as witnesses by the prosecution. The spot explanation given by the accused is supported by several witnesses, except P.W.2. Hence, by virtue of preponderance of probabilities, the accused stands proving his case.

20. The counsel for the appellant relied on two decisions of the Supreme Court:

The decision in C.M. GIRISH BABU v. CBI[1] is to the effect that mere recovery of tainted amount from the accused without substantive evidence cannot be taken as the basis for convicting the accused. It was further held that mere recovery of tainted amount by itself is not enough in the absence of evidence to prove the demand of bribe or that the accused voluntarily accepted the money knowing it to be bribe. The decision also touches upon presumption under Section 20 of

[1] (2009) 3 SCC 779

the Act and as to the burden of proof to rebut the same. It was held that the accused can rebut the charge either through cross-examination of the witnesses or by adducing reliable evidence. Hence, the burden of proof on the accused under Section 20 is not the same as the burden placed on prosecution to prove the case beyond reasonable doubt.

The decision in B. JAYARAJ v. STATE OF ANDHRA PRADESH[2] also runs on the same lines. With regard to presumption it is held that presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. The said presumption is applicable only in respect of offence under Section 7 of the Act but not for the offence under Section 13(1)(d)(i)(ii) of the Act.

On the above legal and factual background, the point is answered in favour of the appellant-accused.

<u>POINT No.2</u>:

In view of the conclusion under point No.1, this Court opines that the judgment of the Court below is not sustainable.

The point is answered accordingly.

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

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accused vide the judgment Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.35 of 2002 dated 15.03.2007 for the offence

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[2] (2014) 13 SCC 55

under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988, are set aside. The appellant-accused shall be set at liberty forthwith, if not required in any other case. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 11th , 2018
DSK