SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1580 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is A1, aggrieved by the Judgment, dated 14.11.2006, passed in C.C.No.14 of 2003 by the Court of Special Judge for CBI Cases, Hyderabad, by virtue of which the trial court convicted A1 for the offence punishable under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "PC Act") and was sentenced to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month.

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

A1 worked as Senior Marketing Officer in Paradeep Phosphates Limited (PPL), a Government of India enterprise in AP Region from June, 1989 to August, 2000. A2 is the wife of A1 and is the Director of M/s.Kakatiya Agri Tech Limited, Huyderabad, which is A4. A3 is the mother of A1 and is the Proprietrix of M/s.Padmavathi Agro Chemicals, Warangal. A1, while working in the A.P. Regional Office of PPL, was entrusted with the work of marketing of PPL fertilizers in Warangal and Karimnagar Districts from June, 1989 to August, 2000. M/s. Padmavathi Agro Chemicals, Warangal has been established in Warangal in 1994 and A1 was posted at Warangal though A3 hails from Vijayawada. A branch of M/s. Padmavathi

Agro Chemicals has been established at Hyderabad only in the year 1997, A1 was posted at Hyderabad. Similarly, M/s. Kaktiya Agri Ltd., started its operation at Hyderabad only in the year 1997 during the period of posting of A1 at Hyderabad. Before this, both the parties did not have any previous experience at all. A1 has forwarded the security deposits submitted to the PPL Regional Office, Hyderabad without submitting the applications of M/s.Padmavathi Agro Chemicals, Warangal, and M/s.Padmavathi Agro Chemicals, Hyderabad, and M/s.Kakatiya Agri Tech Limited, Hyderabad knowing well that the above three firms were represented by his mother and wife respectively. He also supplied PPL stocks to the said companies knowing that they belong to his close relations who were not having any experience in selling fertilizer, which is one of the conditions for appointment of dealers in PPL. A1 is expected to execute the sale of PPL fertilisers namely DAP, Urea and MOP in accordance with the sale terms, which are in force from time to time. In the sales terms dated 12.06.1998 issued from the regional office, PPL, Hyderabad to all the Marketing Officers in AP Region, it was clearly mentioned that credit should be given only to credit parties and it has to be given only for 100 MT, at a time and credit should not be given to the dealers who have outstandings and wherever possible bank guarantees to be obtained from the parties. A1 violated the above sales terms and issued stocks to the companies. A1 supplied 230 MT of DAP of value to Padmavathi Agro Chemicals from 19.08.1998 to 21.08.1998 and 735.6 MT of DAP of value of Rs.60,39,564/- to M/s. Kakatiya

Agri Tech Ltd., from 16.08.1998 to 21.08.1998 when the firms had outstanding of Rs.3.13 lakhs to Rs.13.79 lakhs and Rs.56.31 lakhs to Rs.1.07 crores respectively on the day of supply of stocks, which is against the guidelines issued in the sales terms that credit should not be given to the dealers who have outstandings. Thereby, A1 misused his official position and favoured a company in which he had interest. He failed to obtain bank guarantee from the firms as stipulated in the sales terms. Due to the indiscriminate supply, outstandings of M/s. Padmavathi Agro Chemicals, Warangal, M/s.padmavathi Agro Chemicals, Hyderabad and M/s.Kakatiya Agri Tech Ltd., Hyderabad have been increased substantially. Based on the said complaint, FIR was registered based on the source of investigation. During investigation, witnesses were examined, accused were arrested and after concluding investigation, charge sheet was filed.

3. The trial court has taken the case on file and after complying with all the legal formalities, charges were framed for the offence under Section 120-B IPC against A1 to A4 and under Section 13(1)(2)(d) of the P.C. Act against A1. The plea of not guilty by the accused was recorded and trial was conducted on their claim, during which PWs.1 to 13 were examined and Exs.P1 to P53 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 his evidence and did

not choose to adduce any oral evidence, but Exs.D1 to D15 were marked.

4. After considering the evidence and material on record, the lower court passed the impugned judgment convicting the appellant/A1 for the offence under Section 13(2) r/w 13(1)(d) of the PC Act., while acquitting A1 to A4 for the offence under Section 120-B IPC and A2 to A4 for the offence under Section 13(2) r/w 13(1)(d) of the PC Act.

5. Aggrieved by the said judgment, this appeal is preferred on the grounds that the court below having disbelieved the case of the prosecution relating to involvement of A2 to A4 of the charge under conspiracy, should have thrown out the entire case as false. The court below erred in holding that A2 to A4 has no experience in the field and the allegation that A1 is responsible for setting up of the firms as false. The court below should have seen that Ex.P27 is not directed against A1, which is clear from the admissions made by PWs.3, 11 and 12. The court below failed to see that there is no question of A1 suppressing the fact of setting up of Agro Chemical Agencies without the knowledge of A1's employer. The court below ought to have seen that Exs.P3 to P6 would disclose the relationship, as such, there is no suppression by A1 of any fact. The court below should have seen that even according to PW2, Ex.P7 would disclose that A2 is the wife of A1. The court below failed to see that the evidence of PW3 show that Ex.D2 and D3 disclose that they were ordered during the validity of Ex.P27. The court below ought to have

seen that it is admitted by PW12, that invoices covered by Ex.D6 to D15 were issued by a person other than A1. The court below ought to have seen that the evidence of PW13 indicates that A1 was not at fault.

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

7. The counsel for the appellant submits that there is absolutely no evidence adduced by the prosecution to show that Ex.P27 circular, which prohibits the allotment of dealership to the persons, who have outstandings, was served on the appellant. He further submits even if it is assumed as served, a mere deviation of that circular cannot be construed as an offence of criminal misconduct. He also submits that the evidence shows that no monetary benefit was gained by the appellant by allotment of dealership to A2 to A4 and that there is no amount due from A2 to A4 to the complainant company.

8. The Public Prosecutor, on the other hand, submits that the circular copies were sent to all the section officers, as is disclosed by Ex.P27, and hence, the violation of the said circular would become a basis for initiation of criminal action against the appellant. He further submits that the circular prohibits allotment of dealership to the persons having outstandings and the evidence amply proved that there were outstandings in respect of the companies to A2 to A4 and hence, the judgment of the court below needs no interference.

9. Now the points that have to be considered are:

1) Whether the appellant had knowledge about Ex.P27 circular, if yes, whether the violation of the said circular was intentionally done by the appellant and whether the violation of the said circular itself would attract the alleged offence.

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

3) To what relief?

POINT Nos.1 & 2:

9. Ex.P27 can be looked at in the first instance. It is captioned as 'Inter Office Correspondence' and is addressed to all AM/SMOs/MOs. SMOs means Senior Marketing Officer. The accused is a Senior Marketing Officer admittedly. The circular does not show any acknowledgment of the persons to whom it is sent and the same is admitted.

10. PW11 is the material witness, being the regional in charge in Paradeep Phosphates Limited (PPL) in which the accused worked as Senior Marketing Officer. In the cross-examination, he admitted that he does not know who sent Ex.P27, sales terms. PW12 is another witness, who spoke about Ex.P27, who is the Regional Manager (Marketing), in Paradeep Phosphates Limited, Hyderabad during the relevant period. In the cross-examination, speaking about Ex.P27, he states that it is the marketing officer M. Venkata Ramana, who signed on the said circular on behalf of PW12 knowing the contents therein. Hence, it can be understood that it is not PW12, who is the

person who signed Ex.P27 but it is Venkata Raman, who singed on it on behalf of PW12.

11. Be that as it may, there is absolutely no evidence to show that Ex.P27 was, in fact, served on the persons on whom it is supposed to be served. Hence, the plea of ignorance by the accused of Ex.P27 cannot be brushed aside and his plea remains valid till the time prosecution proves that the said circular was served on him. It is the violation of the said circular that is made as a basis for prosecuting the accused. As per the said circular, credit has to be given only to credit worthy parties and at given time, of 100 MTs and dealers who have outstandings should not be given credit. It also specifies that bank guarantees have to be obtained from the parties wherever possible.

12. Those being the restrictions in the circulars, which permit credit to be given to the dealers, the allegation is that the accused has violated the said terms of the circular and allotted dealership to A2 and A3, who are the Directors of the companies, and who are the wife and mother of A1 and A4 is the brother of one of the partners of Satyanarayana & Co., Warangal, which has business transactions with PPL from 1988. The court below acquitted A2 to A4. The evidence of PW11 shows that there was no condition in PPL at any point of time that the dealership should not be given to the employees of PPL. Hence, the allotment of dealerships by A1 to A2 to A4 by itself does not amount to any violation of the terms of the circular or the norms of the company. But the allegation is that A2 to A4

have out standings and hence, dealership could not have been allotted to them.

13. The evidence of PW12 speaks about the outstanding of each of the companies A2 to A4 and there is no denial of the said fact by the accused also. One of the defences of the accused is that in order to meet the targets, they had to allot the dealerships. The facts elicited in the cross-examination of PW12 are that the market of PPL products in AP may be less than 10% approximately of the total market and they have to be highly competitive to face other players in A.P. Market. The marketing officers worked under him were in charge of two or three districts in the state, whereas GFCL has two or three marketing officers for each district. PW12 admits that in the above circumstances there used to be more pressure on their marketing officers.

14. The facts elicited in the cross-examination of PW12 would clearly show that the company was under heavy pressure and being a company having 10% market share to develop the market, they have been given sales targets to the marketing officers. That can be one circumstance, which can be interpreted in favour of the accused to say that he allotted the dealerships without proper verification of the outstandings, in order to meet the targets set for him. The absence of *mala fides* on the part of A1 in allotting the dealership to A2 to A4 can be gathered from the cross-examination of PW12 where he stated that he does not remember having received any reports regarding instances of A1

giving excessive cash discounts to the companies of A2 to A4. Hence, when there are no monetary benefits given to A2 to A4 and when there is no misuse of the office of A1 in giving any monetary benefits to A2 to A4 and when there is no evidence to show that A1 gained any monetary benefits from A2 to A4 by allotting such dealership, no *mala fides* can be attached to the action of the accused in allotting dealerships to A2 to A4, which ultimately stands to a violation of Ex.P27 circular.

15. This court in a ruling reported in *G. Narasimha Murthi v. State of Andhra Pradesh*[1] held that a deviation of rule or procedure by a public servant may result in misconduct attracting department action but the offence of criminal misconduct needs more than mere deviation.

16. The evidence in this case reveals nothing more than the violation of the circular. PW13, who is the investigating officer, had clearly stated that his investigation did not disclose anything to show that A1 had made any advantage to the above two firms in supply of PPL material to them, when compared to other dealers. He also admitted that even prior to filing of the charge sheet in this case, one time settlement has been made by the above two firms with PPL. Hence, the admission of PW13 itself makes it clear that there are no dues from A2 to A4 firms to the complainant and absolutely there is no monetary gain to any of the accused.

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[1] 2014(1) ALD (Crl.) 417 (AP)

17. In view of the above, this court opines that mere violation of the terms of the circular itself would not amount to commission of offence by A1. Hence, the judgment of the court below needs to be set aside.

Accordingly, points 1 to 3 are answered.

<u>POINT No.4</u>:

18. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded against the appellant for the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act vide Judgment, dated 14.11.2006, passed in C.C.No.14 of 2003, by the Court of Special Judge for CBI Cases, Hyderabad are hereby set aside and consequently the appellant is acquitted of the charge leveled against him. The appellant/A1 shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant/A1 shall be refunded to him.

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T. RAJANI, J

October 12, 2018
LMV