

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1029 of 2007

JUDGMENT:

This appeal is preferred by the appellant, against the judgment of the Principal Special Judge for SPE & ACB Cases, Hyderabad in CC.No.32 of 2002 dated 02.08.2007, convicting and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 7 of the Prevention of Corruption Act and to undergo rigorous imprisonment for period of one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act (for short 'the Act').

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

The complainant gave a report to the ACB stating that the SI of Police, Makloor Police Station, Nizamabad District demanded a bribe of Rs.2,000/- from him for doing official favour i.e. for not registering the case against him and for booking a petty case on the petition of one Smt. D. Neela and Jyothi of Dasnagar village. When the complainant expressed his inability, the SI of police, who is the accused, demanded him to pay the bribe amount in two instalments of Rs.1,000/- each. The complainant paid Rs.1,000/- at his residence. After accepting the said amount, the accused asked the complainant to pay the remaining amount within two days. But the complainant was not willing to pay the said amount and hence, he approached the DSP, ACB on

06.04.2001 and lodged the complaint, based on which, a case was registered in Cr.No.3/ACB-NZB/01 for the offence under Section 7 of the Act.

During investigation, two witnesses were secured for the trap proceedings laid on 07.04.2001. The Phenolphthaline test was conducted over both the hand fingers of the accused yielded positive result and the tainted amount was seized from the possession of the accused. The statements of witnesses were recorded. The accused was arrested and released on bail. After concluding investigation, the charge sheet was laid against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of the Act.

The Court below took cognizance of the case and after complying with the required legal formalities framed the aforesaid charges against the accused and recorded the plea of not guilty by the accused. During trial, P.Ws.1 to 9 were examined and Exs.P1 to P16 and M.Os.1 to 8 were marked on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, when he was questioned under Section 313 Cr.P.C, which he denied. He filed a written statement and D.Ws.1 and 2 were examined and Ex.D1 was marked on behalf of the defence.

4. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following grounds:

The Court below failed to see that the ingredients to constitute the said offences are not made out by any legal evidence; it ought to have seen that the explanation given by the accused has been incorporated in the pre-trap panchanama; it failed to see that there is sufficient motive for P.W.1 to foist the case, as he did not take any action on the report lodged by the brother of P.W.1; it ought to have seen that the present complaint has been lodged at the instance of his friends brother, working in ACB Nizamabad and also on the advice of P.W.3; it ought to have noticed that on 03.04.2001 itself petty case was registered against P.W.1 and charge sheet was also prepared on the same day, hence, demanding money for foisting a case for the offence under Section 354 IPC is false; it ought to have noticed that the evidence of P.W.8 falsifies the case of P.W.1 with regard to the demand on 03.04.2001 and in fact, P.W.1 executed personal bond, Ex.P3 on 04.04.2001, which was seized from Murali Mohan constable and Ex.P3 refers to registration of petty case, which is much prior to the lodging of Ex.P1 on 06.04.2001. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

5. Heard the learned counsel for the appellant and the learned public prosecutor appearing for the respondent.

6. The counsel for the appellant submits that the background facts are that there was dispute with regard to the bore well and one Neela and Jyothi, who are the sisters of the complainant by courtesy, quarrelled with the brother of the complainant by removing the bucket at the bore well and assaulted his brother. The complainant separated

the two ladies from his brother and asked them to go away. The ladies approached Makloor police station and the complainant also asked his brother to go to the police station. The brother of the complainant was detained in the police station on the said date itself and on the next day, his brother was released from the police station and the police instructed him to send the complainant to the police station, saying that his brother was not more necessary. On 01.04.2001, again the police came to the house of the complainant and on 02.04.2001 the complainant went to police station and then the accused, who was the SI of police, asked him to sit in the police station up to 6 PM or 7 PM. The accused demanded the complainant to pay Rs.2,000/- for filing a petty case against him, instead of filing a serious case.

This being the background, the counsel contends that even by the date of the alleged demand, the charge sheet was filed against the accused. Hence, the question of making any demand for filing petty charge sheet does not arise.

7. Learned Public Prosecutor, on the other hand, submits that the in spite of the petty charge sheet being filed, the demand is possible, as the complainant might not have been aware of the filing of the charge sheet and the accused might have taken advantage of the ignorance of the complainant.

8. Keeping the above arguments in view and based on the evidence, the following points can be framed for consideration:

1. Whether there was any official favour pending with the accused by the date of the alleged demand of bribe from the complainant and whether the prosecution

could prove the guilt of the accused, for the offence with which he is charged, beyond all reasonable doubt.

2. To what result.

POINT No.1:

9. P.W.1, in his evidence, reiterates the contents of the complaint. The genesis of the incident is a quarrel between the brother of the P.W.1 and two sisters of P.W.1 by courtesy. On 31.03.2001, his brother Ashok went to bore well, which was in front of his house and while he was fetching water, one Neela and Jyothi came there and quarrelled with his brother by removing the bucket. They assaulted his brother. He separated the two ladies and asked them to go away. The said ladies went to the police station. He asked his brother also to go to the police station but his brother was detained in the police station and on the next day, he was released with instruction to send him to the police station. On 01.04.2001, the police came to his house but he was not present and P.W.3 was present. Since he was absent, police had taken P.W.3 to the police station. Subsequently, P.W.2 and one Narasimulu, who is the son of his senior paternal uncle, went to the police station and got released P.W.3 by giving sureties. When P.W.3 was released, he was directed to send P.W.1 to the police station. On 02.04.2001, he went to the police station and then the accused, who was the SI of the police station, made him to sit in the police station up to 6 PM or 7 PM. P.W.3 came to the police station and got him released by standing as surety. At that time, the accused demanded him to pay Rs.2,000/- for filing a petty case against him, instead of filing a serious case. The accused also stated that in case he fails to pay the said amount, he would send him to judicial remand on

the complaint which was already given by the said Jyothi and Neela. He expressed his inability to pay Rs.2,000/- to the accused for which the accused advised him to pay the same in two instalments of Rs.1,000/- each.

On 04.04.2001, he went to the house of the accused at about 8 AM and paid him Rs.1,000/-. At that time, the accused asked him to pay the remaining amount of Rs.1,000/- within two days and informed him that in case he pays the remaining amount of Rs.1,000/- he would book a petty case. Since he was not willing to pay the remaining amount to the accused, he went to the office of DSP, ACB, Nizamabad and reported the matter and a case was registered and he was asked to come on 07.04.2001. As such, he went to the office of the DSP on 07.04.2011 by 7 AM and two officials were introduced to him as mediators. During the pre trap proceedings, the proposed bribe amount of Rs.1,000/- was tainted and was kept in his pocket. He was instructed to give the pre-arranged signal after handing over the amount to the accused after his demand. They left the office and went to the house of the accused. He observed the presence of two constables and the accused near the gate of the house of the accused. The accused asked him whether he brought the money, on which he replied affirmatively and paid the said tainted amount of Rs.1,000/- to the accused, who received the same and counted. Thereafter, the accused kept the said amount in his shirt pocket. Then he relayed the pre arranged signal to the trap party and the DSP instructed him to wait outside the house of the accused and the trap party members

including the DSP entered into the house of the accused. After one hour, he was called inside and his version was recorded.

His cross-examination was recorded as nil and later he was recalled on 05.12.2006. He stuck to the version given in the chief examination. It was suggested to him that he developed the version after knowing fully well that the accused signed the petty case charge sheet filed against him on 03.04.2001.

10. P.W.2 is the younger brother of P.W.1. He is no other than Ashok with whom the dispute started. He was present with P.W.1 when he went to the office of DSP, ACB. He stated that in the month of April 2001 the police came and took P.W.3 and kept him at the police station. Himself and one Narasimulu went to the police station and got him released by giving sureties. Subsequently, in the month of April 2001, on some other date, P.W.1 gave a complaint against the SI of police to DSP, ACB. Regarding the incident that occurred on the date of trap, he stated that at 9.30 AM they reached the house of the accused and he dropped at a place which was about 100 yards from the house of the accused. He saw P.W.1 and the accused talking to each other at the gate of the house of the accused and none else was observed by him. Subsequently, P.W.1, DSP and others entered into the house of the accused and he was not called inside. At that stage, he was declared hostile by the prosecution.

But in the cross-examination done by the Public Prosecutor, he admitted that he stated to the Inspector, ACB that on 02.04.2001, his brother was kept in the police station and that having come to know about it, his uncle went to the police station and got him

released and that in that connection the accused demanded Rs.2,000/- from P.W.1. Hence, the evidence of P.W.2, given in the cross-examination, comes in support of the evidence of P.W.1.

11. P.W.3 is a person known to P.W.1 and the accused. He spoke about the quarrel that took place between the P.W.2 and Neela and Jyothi and also the other happenings on that date. There was a discussion between the accused and P.W.1 and they enquired with the SI whether they are required to be in the police station or not. The accused stated that he should pay the amount on the next day. The accused also stated that quarrelling with ladies is a fault and that it amounts to a grave case and he also demanded P.W.1 to pay Rs.2,000/- so that he would file a petty case against P.W.1. He corroborated the evidence P.W.1 on other aspects.

12. P.W.4 is the mediator, who corroborated the evidence of P.W.1. A suggestion given to him is that during post trap proceedings, the accused gave spontaneous explanation that he came out of the house to see off Sri Amar and Sri Sudershan, Vartha and Eenadu press reporters, who came to invite him for tonsuring ceremony of the son of Sudershan, scheduled on 07.04.2001 and that while he was waiting, after seeing them off, P.W.1 came to him, shook hands thanking him and kept the amount in his hands while shaking hands and that when he refused and returned the said amount, P.W.1 suddenly thrust the said amount in his shirt pocket and that on his shouting at P.W.1, the gunman and head constable rushed to him from inside the compound of his house.

13. P.W.5 is the head constable of the police station. His evidence is that on 07.04.2001, the accused was on bandobast duty in connection with the visit of Hon'ble Chief Justice of High Court AP and himself and L.W.7 were on duty with the accused at that time. At about 9.30 PM, P.W.1 came to the house of the accused and met him at the compound gate of the house of the accused and talked to him. Meanwhile, ACB officials apprehended the accused. He did not observe as to what transpired between P.W.1 and the accused at that time. At that stage, P.W.1 was declared hostile by the prosecution.

14. P.W.6 is another constable, who also turned hostile. P.W.7, who was the Assistant Section Officer in Agricultural Department at the relevant point of time, secured sanction orders for prosecution of the accused. P.W.8 is the DSP, ACB, Nizamabad during the relevant period. He spoke about the report lodged by P.W.1 and the post trap proceedings. P.W.9 is the Inspector, ACB, who conducted part of the investigation and filed charge sheet.

15. D.Ws.1 and 2 were examined on behalf of the accused. D.W.1 is police constable in the Makloor Police Station during the relevant period. According to his evidence, on 04.04.2001, he along with the accused and another police constable went to Chikli, Gunjli and Nandipet villages in connection with the investigation in Cr.No.101 of 2000 and while they were at Nandipet, the DSP, Law and Order, Nizamabad contacted the accused and informed him to proceed to Nanded in connection with the same crime, as such, they went to Nanded and returned to Makloor village in the early hours of 07.04.2001. At that time, the DSP instructed the accused to look after

bandobast duty as the Hon'ble Chief Justice of AP was visiting Armoor. As such, they got down the jeep and the accused along with other constables went to bandobast duty. On 07.04.2001, at about 11.30 AM, he came to know that the accused as trapped in an ACB case at his house.

D.W.2, who is the wife of the accused, corroborated the evidence of D.W.1 with regard to the accused going out of the head quarters on 04.04.2001.

16. All the evidence on one side, the fact remains that the petty case charge sheet was already filed by the date of the alleged demand. P.W.1 was arrested on 02.04.2001 and he was released on surety and the surety bond is dated 04.04.2001. The petty case charge sheet is filed on 03.04.2001 itself. The said fact is not disputed by the Public Prosecutor. A copy of the petty case charge sheet is marked before the Court as Ex.P6. Hence, by virtue of the said petty case charge sheet, the case of the prosecution becomes inconsistent. However, the argument of the Public Prosecutor, that the complainant might have not known about filing of the petty case charge sheet and that the accused might have taken advantage of the said ignorance and demanded the said amount, ought to have been demonstrated through the evidence of P.W.1. P.W.1, when suggested about the said charge sheet, except denying the said suggestion, did not offer any explanation or any version that he is ignorant of filing of the charge sheet. There is absolutely no reason that is projected, through the evidence of P.W.1, for the accused to assume that P.W.1 might have been ignorant of filing of the charge sheet. The very purpose of

demand is for filing of the petty case charge sheet. The demand, according to P.W.1, was made on 02.04.2001 but on 04.04.2001, he paid only Rs.1,000/- and the remaining balance of the amount i.e. Rs.1,000/- had to be paid before the accused fulfils the official favour and the fact that the petty case charge sheet was filed on 04.04.2001 prior to P.W.1 satisfying the demand, would throw any amount of doubt on the case of the prosecution.

The point is answered accordingly.

POINT No.2:

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accused in CC.No.32 of 2002 dated 02.08.2007 by the Principal Special Judge for SPE & ACB Cases, Hyderabad. The appellant-accused is acquitted of the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 and he shall be set at liberty forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

October 24, 2018
DSK

T. RAJANI, J