

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL Nos. 878 AND 895 OF 2010

COMMON JUDGMENT:

Both the Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 07.07.2010 passed in Calendar Case No.70 of 2005 on the file of the Principal Special Judge for S.P.E. and A.C.B. Cases, City Civil Court at Hyderabad (for brevity, 'the trial Court'), whereby the trial Court convicted Accused Officer No.1, who is the appellant in Crl.A. No.878 of 2010, of the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the P.C.Act, 1988') and sentenced Accused Officer No.1 to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- in default, to undergo simple imprisonment for a period of one month for the offence under Section 13(1)(a) read with Section 13(2) of the P.C.Act, 1988 and further to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- in default, to undergo simple imprisonment for a period of one month for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act, 1988. The trial Court also convicted Accused No.2, who is the appellant in Crl.A. No.895 of 2010, of the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988 and Section 109 I.P.C. and sentenced Accused No.2 to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- in default, to

undergo simple imprisonment for a period of one month for the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988 read with Section 109 I.P.C.

2. Heard Sri Ashok Goud Ponnampallam, learned counsel for the appellant/AO.1 in Crl.A.No.878 of 2010, Sri A.Hanumantha Reddy, learned counsel for the appellant/A.2 in Crl.A.No.895 of 2010, and Sri V.Ravi Kiran Rao, learned Standing Counsel and Special Public Prosecutor for A.C.B., apart from perusing the material available on record.

3. The case of the prosecution, in brief, is as follows:

Accused Officer No.1 (AO.1) is a Motor Vehicle Inspector, R.T.A. West Zone, Hyderabad, and he was a public servant within the meaning of Section 2(c) of the P.C.Act, 1988 and Accused No.2 (A.2) was a former licensed agent in R.T.A. Office and he was working as a guide to the customers outside the R.T.A. Office. On 06.04.2004, ACB Inspectors along with the mediators, on credible information, conducted a surprise check at the STD Booth, situated near West Zone R.T.A. Office and found A.2 collecting amounts from the persons, who have come to the R.T.A. Office for registration of vehicles. At that time, they also found persons, T.Venkatesh (P.W.2), Shaik Amzad (P.W.3) and Gunda Sridhar (P.W.7) and A.2 being in possession of cash of Rs.1,980/-. The Inspector examined Shaik Amzad (P.W.3) and A.2 and after recording statement of A.2 before the mediators, A.2 took the Inspector into the R.T.A. Office and showed AO.1. After introducing himself and after ascertaining

particulars of AO.1, the Inspector verified 40 files and out of 40 files, six files found containing the handwriting of A.2 identified by him. He also examined the other witnesses, T.Venkatesh (P.W.2), G.Sridhar (P.W.7) and Asif Khan (L.W.8). Having found the *modus operandi* that only after satisfying himself with the code word 'West Zone' mentioned by A.2, which indicated about the receipt of the illegal gratification, AO.1 was found attending to the registration of the vehicles, and out of 40 files, six files were found containing the code words 'West Zone', the same were seized under the surprise check proceedings, drafted by the mediators and a report was sent to D.G., A.C.B., and thereafter, a case in Crime No.10/ACB-CR/2004 was registered on 29.04.2004 against AO.1 and A.2. Later, during the course of investigation, the specimen handwritings of A.2 were obtained in the presence of mediators under the cover of panchanama and the same were sent to Andhra Pradesh State Forensic Laboratory, Hyderabad, wherein the Scientific Officer after examining hand-writing in the seized file sent along with the specimen handwritings and signatures of A.2, opined that the handwritings of the code word 'West Zone' were that of A.2. After completion of investigation, the Inspector submitted his draft final report to DG, ACB recommending prosecution of AO.1 and A.2. After receipt of sanction to prosecute against AO.1 and A.2 from the Government through DG, ACB, the Inspector laid charge sheet.

4. The trial Court had taken case on file for the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988 and under Section 109 I.P.C. against AO.1 and A.2 and after following due procedure, charges under Sections 13(1)(a) and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 against AO.1, and Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act and Section 109 I.P.C. against A.2, were framed. When the charges were read over and explained to the accused, both the accused denied the same and claimed to be tried.

5. During the course of trial, the prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to P.18 besides case properties M.Os.1 and 2.

6. After closure of the prosecution evidence, AO.1 and A.2 were examined under Section 313 Cr.P.C., explaining the incriminating circumstances appeared against them in the evidence of the prosecution witnesses, for which AO.1 admitted that he is the concerned M.V.Inspector, who was entrusted with the registration of vehicles during the month of April, 2004, of West Zone and denied of his having any connection with A.2 or collecting any amounts through A.2. AO.1 also admitted that the Inspector, in the presence of mediators, secured the files and pleaded ignorance about some of the files containing the handwritings of A.2. A.2 denied that Shaik Amzad (P.W.3) handing over registration papers of their vehicles and admitted

that he worked as licensed RTA agent earlier and later, after the licensing agent system was abolished, he was working as a private R.T.A. agent at STD Booth of Parwaz Khan (P.W.5). A.2 admitted that at the relevant time on 06.04.2004, he was apprehended and Ex.P.1 file was taken from him, but claimed that Rs.1,980/- found in his possession was his personal cash. A.2 further admitted that his signatures were obtained on the report, but claimed that he was only made to sign and he is unaware of. A.2 also admitted that the handwritings and signatures were obtained in the presence of T.Yadaiah (P.W.10), but feigned ignorance as to what purpose his handwritings and signatures were obtained. No defence witnesses were examined.

7. The trial Court, after hearing arguments of both sides and considering the material evidence on record, convicted AO.1 and A.2 under Section 248(2) Cr.P.C. of the charges leveled against them and sentenced them as stated supra.

8. At the time of arguments, it is brought to the notice of this Court that A.2, who is the appellant in Crl.A. No.895 of 2010, passed away. But neither the learned counsel for A.2 nor the Special Public Prosecutor had filed a copy of the death certificate to the effect that A.2 passed away during pendency of the appeal. When there is no substantial material to hold that A.2 passed away, it is appropriate to dispose of the appeal filed by him on merits.

9. Learned counsel appearing for the appellants/AO.1 and A.2 would submit that the conviction and sentence recorded against the appellants is contrary to law and the facts of the case; the trial Court ought not have relied on the evidence of P.Ws.1 3, 5 and 13, who are all interested witnesses; there is no connection between AO.1 and A.2; there is no proof to substantiate the same; the trial Court erroneously held that the endorsements made on the applications as 'West Zone' are signals to A.1 with regard to the bribe amounts received by A.2; P.W.3 is a planted witness; the incriminating evidence of P.W.3 was not put to AO.1 and A.2 when they were examined under Section 313 Cr.P.C.; the alleged statements made by A.2 cannot be used against AO.1; P.W.6-owner of the vehicle did not state anything implicating AO.1; the trial Court failed to take into consideration that there are number of persons sitting outside the R.T.C. Office and collecting remuneration for their assistance rendered to the vehicle owners for registration of their vehicles; and ultimately, prayed to set aside the conviction and sentence recorded against AO.1 and A.2.

10. On the other hand, learned Standing Counsel and Special Public Prosecutor would submit that the trial Court had elaborately dealt with the evidence on record and rightly convicted and sentenced the appellants, the said finding is based on the evidence on record; there is nothing to interfere with the finding of the trial Court; and ultimately, prayed to dismiss the appeal.

11. In view of the contentions put forth by both sides, the point for determination is, whether the conviction and sentence recorded by the trial Court against the appellants for the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988 and under Section 109 I.P.C. are sustainable?

12. **POINT:** There is no much dispute that AO.1 is a public servant as defined under Section 2(c) of the P.C.Act, 1988. Further there is specific evidence of P.W.11-B.Sridhar with regard to the sanction accorded, *vide* orders dated 27.09.2005, to prosecute AO.1. Therefore, it can be safely concluded that AO.1 is a public servant, as defined under Section 2(c) of the P.C.Act, 1988, and there is a sanction order to prosecute him under Ex.P.16, *vide* G.O.Ms.No.208 dated 27.09.2005.

13. The contention put forth on behalf of AO.1 and A.2 was that the prosecution failed to prove the requirements of Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988. As per the evidence, P.W.2-T.Venkatesh brought three two-wheelers, P.W.3-Shaik Amzad brought Eicher goods vehicle for registration. P.W.6-Mohd. Mastan is the original owner of the Eicher goods vehicle, who entrusted registration work to P.W.3 along with the file marked as Ex.P.1. P.W.7-G.Sridhar is one of the witnesses examined to substantiate the nexus between AO.1, who is Motor Vehicle Inspector, and entrustment of the work of registration of motor vehicles to A.2 who is a middle man

through whom, AO.1 was collecting bribe for registration of the motor vehicles. There is also another witness P.W.8-Md.Asif Khan to prove the link between A.2 and the R.T.A. Officials in getting the vehicles registered on receipt of illegal gratification other than the legal remuneration.

14. P.W.5-Parwaz Khan is the telephone booth owner, situated near the subject R.T.A. Office, West Zone. His evidence reveals that he knew A.2; A.2 used to visit STD booth at West Zone Office; some people used to approach A.2 and handing over papers and amounts to him. There is specific evidence of P.W.5 that on 06.04.2004, A.2 came to his STD booth and then he observed some persons meeting A.2 and handing over papers and later, A.2 was apprehended by the police.

15. As per the evidence of P.W.2-T.Venkatesh, on 06.04.2004, he took three two-wheelers for registration, went to A.2, paid Rs.240/- at the rate of Rs.80/- per vehicle, A.2 endorsed on Ex.P.2-application/document containing 10 sheets, Ex.P.3 document containing 13 sheets, Ex.P.4 document containing 11 sheets, Ex.P.5 document containing 13 sheets. Thereafter, he took those applications/ documents to a constable and stated to him that he paid Rs.240/- @ Rs.80/- per vehicle, apart from regular requisite fee. There is also evidence of P.W.2 that on payment of the above mentioned Rs.240/- besides the regular fee to A.2, AO.1 initialed the application for process. The

statement of P.W.2 was recorded under Section 164 Cr.P.C. There is no material contradiction in the statement given by P.W.2 recorded under Section 164 Cr.P.C. There is also specific evidence of P.W.2 that A.2 made an entry on Exs.P.3 to P.5 documents as 'West Zone', i.e., marked as Ex.P.3(a), Ex.P.4(a) and Ex.P.5(a). There is also mention that A.2 directed P.W.2 to meet AO.1 with those applications. Further, there is evidence of P.W.2 that AO.1 after perusing endorsements made by A.2 as 'West Zone' signed those applications and directed him to get the vehicles checked. Thereafter, he submitted Exs.P.3 to P.5 applications/documents at the registration counter. During the course of cross-examination of P.W.2 by the learned counsel for A.2, P.W.2 stated that what all stated in the statement given by him before the Magistrate are correct. There is specific evidence of P.W.2 that after receiving of additional amount of Rs.80/- per two-wheeler vehicle, an endorsement on the application as 'West Zone' was made and AO.1 after being satisfied with the endorsement, initialed the application.

16. The evidence of P.W.3-Shaik Amjad reveals that he brought the vehicle of P.W.6-Mohd. Mastan for registration of Eicher goods vehicle and after paying registration charges, he met AO.1, gave papers to AO.1 for inspection, but AO.1 gave the same to him and directed him to go to A.2 and pay Rs.750/- towards 'Mamool', A.2 who was at STD booth situated near the R.T.A. Office, West Zone, after receiving Rs.750/-, made some writings on papers, i.e., Ex.P.1, and Ex.P.1(a) is the

endorsement of A.2, and thereafter, papers were handed over to AO.1. There is no dispute with regard to payment of regular requisite fee by remittance. P.W.3 denied a suggestion that AO.1 did not direct him to meet A.2. The statement of P.W.3 was also recorded under Section 164 Cr.P.C.

17. As per the records available, AO.1 was being entrusted with the duty of registration of motor vehicles, with effect from 01.04.2004 to 30.04.2004. In the course of investigation, some application forms available with AO.1, i.e., Exs.P.1 to P.7 were seized, where there is specific mention of words 'West Zone'. Those are all original application forms. The specimen handwritings of A.2 were obtained in the presence of mediators, i.e., P.W.10-T.Yadaiah and another, under mediators report marked as Ex.P.15. There is specific evidence of P.W.10-T.Yadaiah with regard to obtaining specimen handwritings of A.2 in his presence and in the presence of another mediator of DCP, ACB Office. P.W.10-T.Yadaiah denied that he was deposing false. P.W.10 had given the details of obtaining signatures of A.2 on Ex.P.15. In the course of evidence, the endorsements said to have been made by A.2 as 'West Zone' found in the material documents were marked as Ex.P.1(a), Ex.P.2, Ex.P.3(a), Ex.P.4(a), Ex.P.5(a), Ex.P.6 and Ex.P.7 and these documents were examined by P.W.12-Scientific Officer and the said officer gave his opinion under Ex.P.17.

18. In view of the evidence of P.W.10-T.Yadaiah and the recitals in the document marked as Ex.P.15, under which the handwritings of A.2 were collected, and on comparison made by P.W.12-Scientific Officer, the words 'West Zone' found in Ex.P.1(a), Ex.P.2, Ex.P.3(a), Ex.P.4(a), Ex.P.5(a), Ex.P.6 and Ex.P.7 are in the handwriting of A.2. The Expert opinion given by P.W.12 in Ex.P.17 cannot be brushed aside. Further, there is specific evidence of P.W.2 that A.2 had made endorsements as 'West Zone', i.e., Ex.P.3(a), Ex.P.4(a) and Ex.P.5(a) in his presence. There is also evidence of P.W.3-Shaik Amjad, the application submitted by him is Ex.P.1 and Ex.P.1(a) is the endorsement as 'West Zone' made by A.2. Considering the testimonies of these witnesses also, it can be safely concluded that A.2 is the person who made the endorsements as 'West Zone' as exhibited in the aforementioned documents. As per the application form, 'West Zone' was written by A.2 on the top of the application. There is no specific column to mention the same. In such a case, there is no necessity to A.2 to mention 'West Zone' on the applications handed over to him. It goes to show that the mention of 'West Zone' on the applications by A.2 is an indication to AO.1 to initial the application and conduct the examination of the vehicle.

19. Further, as per the evidence of P.W.6, he entrusted the duty of registration of Eicher goods vehicle to P.W.3. There is evidence of P.W.3-Shaik Amjad that he directly approached AO.1 with material papers and after paying the requisite fee, but

AO.1 after inspecting the papers returned the said papers to him and directed him to meet A.2 and pay Rs.750/- towards 'Mamool'. It also establishes a link between AO.1 and A.2 and the manner in which AO.1 was receiving illegal gratification other than legal remuneration, with the assistance of A.2.

20. In the instant case, AO.1 had not received the bribe amount directly. When the evidence of P.W.2 and P.W.3 is considered, it clearly establishes beyond doubt that AO.1 had been indulging in collection of illegal gratification through A.2. There is record to show that AO.1 had been doing the same repeatedly and persistently. Therefore, no amount is required to be found in possession of AO.1. There is nothing wrong on the part of Anti Corruption Bureau officials in conducting periodical raids. They cannot be faulted for doing the surprise check of West Zone R.T.A. Office. There is no reason for A.2 to write/indicate 'West Zone' on the top of the application form. The contentions raised on behalf of the appellants that the findings of the trial Court are contrary to law and the facts of the case are untenable. The evidence on record clearly establishes a link between AO.1 and A.2, in collection of illegal gratification by AO.1 through A.2. The endorsement made as 'West Zone' by A.2 is held to be a signal to AO.1 with regard to receipt of bribe amount on behalf of AO.1. There is no planted witness, particularly P.W.3. His evidence is cogent, consistent and trustworthy. There is no reason for P.W.3 to falsely implicate AO.1 and A.2 in this case.

21. It has been contended that the incriminating evidence of P.W.3 was not put to AO.1 and A.2 when they were examined under Section 313 Cr.P.C. It may amount to an irregularity but not illegality, and would not go to the root of the case. No prejudice is shown to be caused to the case of the accused. In view of the cogent and convincing evidence on record, this omission does not cause any prejudice to AO.1 and A.2. The trial Court did not act on any inadmissible evidence. The opinion given by P.W.12-Scientific Expert and the documents marked as Ex.P.15 and Ex.P.17 are reliable and clearly establish that the words 'West Zone' were written by A.2. It is an indication to AO.1 with regard to the receipt of the bribe amount. There are no inconsistencies, material omissions and contradictions in the evidence of the prosecution witnesses. The prosecution proved the charges leveled against the accused beyond all reasonable doubt. The findings given by the trial Court are based on the evidence on record and the trial Court rightly convicted and sentenced AO.1 of the offences under Sections 13(1)(a) and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988, and A.2 of the offences under Sections 13(1)(a) and (d) read with Section 13(2) of the P.C.Act, 1988 and Section 109 I.P.C. There are no grounds to interfere with the findings of the trial Court. Both the appeals are devoid of merit and they are liable to be dismissed.

22. In the result, both the Criminal Appeals are dismissed confirming the judgment dated 07.07.2010 in

Calendar Case No.70 of 2005 on the file of the Principal Special Judge for S.P.E. and A.C.B. Cases, City Civil Court at Hyderabad.

As a sequel, Miscellaneous Petitions, if any, pending in these appeals, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 04-06-2018
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