

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1125 OF 2006

JUDGMENT:

This appeal is filed under Section 378 (3) & (1) of Cr.P.C., assailing the judgment dated 16.9.2005 passed in C.C.No.20 of 1995 on the file of the Court of the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, wherein and whereby the respondent No.1-Accused Officer No.1 was found not guilty for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 read with 34 IPC and consequently acquitted him of the said charges.

2. The facts leading to filing of the present appeal are as follows:

(a) Accused Officer No.1 worked as Town Planning Supervisor, Anantapur Municipality from 14.6.1993 to 11.7.1994. Accused Officer No.2 worked as Town Planning Officer, Anantapur Municipality from 05.6.1993 to 11.7.1994. One B.Krishna Murthy-P.W.1, who is a resident of Anantapur, submitted an application-Ex.P9(a) on 13.5.1994 to the Commissioner, Anantapur Municipality seeking permission to install 15 HP electric motor to start baby oil expeller by replacing existing 10 HP electric motor. The application of P.W.1 was sent to A.O.1 for enquiry and report. A.O.1 visited the proposed factory of P.W.1 on 15.5.1994. On 16.5.1994 and 18.5.1994 P.W.1 along with B.Shiva Shankar Reddy-P.W.6 approached A.O.1 in Municipal Office, Anantapur and requested to expedite the application, for which A.O.1 demanded Rs.10,000/- as a bribe. Having no other

alternative, P.W.1 submitted a complaint-Ex.P2 on 19.5.1994 to the Deputy Superintendent of Police, Anti Corruption Burueau, Anantapur Range-P.W.8, who in turn registered a case in Crime No.7/ACB-ATP/94 under Sections 7, 11 and 13(1)(d) read with 13(2) of the P.C. Act. On the same day, P.W.8 secured the presence of mediators-P.Ws.3 and 7 and introduced them to P.Ws.1 and 6 and vice-versa. P.W.8, during the course of pre-trap proceedings, conducted sodium carbonate solution test in the presence of P.Ws.3 and 7 and explained the importance of the same.

(b) P.W.8 along with mediators (P.Ws.3 and 7), the Inspector of Police, ACB, Anantapur (P.W.5) and other officials went to the Municipal Office, Anantapur at about 4.30 pm. As per the directions of P.W.8, P.Ws.1 and 6 went into the Municipal Office and handed over the tainted money-M.O.1 to A.O.1 towards bribe. After receiving the signal from P.W.1, P.W.8 along with other staff entered into the Municipal Office, and identified A.O.1. P.W.8 conducted sodium carbonate solution test to the hands of A.O.1 in the presence of P.Ws.3 and 7 and left hand fingers of A.O.1 turned into pink colour. P.W.8 prepared panchanama-Ex.P5 and thereafter they went to the house of A.O.1, who in turn disclosed that he handed over tainted money to P.W.2. P.W.8 prepared mediators' report-Ex.P.8 in the presence of P.Ws.3 and 7; thereafter, they visited the shop of P.W.2 and seized tainted money-M.O.1 and prepared panchanama-Ex.P9 after conducting sodium carbonate solution test.

(c) After receiving sanction orders-Exs.P12 And P13, P.W.8 laid charge sheet before the Special Court against A.Os.1 and 2 for the offences under Sections 7, 11, 13(1)(d) read with 13(2) of the P.C. Act read with 34 IPC. The Special Court has taken the cognizance of offence for the above Sections of law.

(d) On appearance of the accused officers, learned Special Judge had furnished copies of the documents as contemplated under Section 207 of Cr.P.C. After hearing both sides, learned Special Judge framed charges against the accused officers under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act read with 34 IPC, read over and explained to them in Telugu for which they pleaded not guilty and claimed to be tried.

(e) To prove the guilt of the accused officer, on behalf of the prosecution, P.Ws.1 to 9 were examined and Exs.P.1 to P.17 and M.Os.1 to 13 were marked. During the pendency of trial, A.O.2 died; hence the case against him abated. After completion of the evidence on behalf of the Prosecution, A.O.1 was examined under Section 313 Cr.P.C., with reference to the incriminating material deposited against him, which he denied. On behalf of the defence, D.W.1 was examined and Exs.D1 and D2 were marked.

(f) Basing on the oral and documentary evidence available on record, the Special Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused officer for the offences charged under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act read with 34 IPC; consequently acquitted him of the said charges. Hence the present appeal by the State.

3. The learned Special Public Prosecutor for ACB attacked the impugned judgment on the following grounds:

- (i) The trial Court has not considered testimony of P.Ws.3, 6 and 7, which is in support of the prosecution version.
- (ii) The trial Court has not properly considered the testimony of P.W.1, who fully supported the prosecution version.
- (iii) The findings of the trial Court are not based on evidence much less legally admissible evidence; hence, it is a fit case to allow the appeal.

Per contra, Sri C.Subhodh, learned Advocate, representing Sri O.Manohar reddy, learned counsel for the Accused Officer No.1, submitted that the testimony of P.Ws.3 and 7, who are panch witnesses, is no way helpful to the prosecution case. He further submitted that the prosecution failed to prove from whose custody Ex.P.1 File was seized. He further submitted that the prosecution miserably failed to prove that the official favour was pending before A.O.1 as on the date of the alleged trap i.e., on 19.5.1994. He further submitted that the findings recorded by the trial Court are based on evidence much less legally admissible evidence; therefore, this is not a fit case to interfere with the well considered judgment of the trial Court and hence the appeal is liable to be dismissed.

4. Now the points that would emerge for consideration in this appeal are:

- (i) Whether the prosecution proved the guilt of A.O.1 for the offence under Sections 7 and 13(1)(d) read with 13(2)

of the P.C.Act and 34 IPC beyond all reasonable doubt?
and

(ii) Whether the findings recorded by the trial Court are sustainable in law either on facts or in law?

5. Both the points are inter-linked; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

6. The testimony of P.W.1 reveals that on 19.5.1994 he submitted Ex.P.2-complaint to P.W.8. The testimony of P.W.8 reveals that on 19.5.1994 he registered a case in Crime No.7/ACB-ATP/94 basing on Ex.P.2 complaint and issued Ex.P11-First Information Report. In the cross-examination of these witnesses, nothing was elicited to shake their testimony so far as lodging of the complaint and registration of the case are concerned. The material available on record clinchingly established that P.W.1 set the criminal law into motion.

7. As seen from the testimony of the prosecution witnesses, as on 19.5.1994, A.O.1 was working as Town Planning Supervisor, Anantapur Municipality. This fact was not denied by A.O.1. Thus A.O.1 is a '*public servant*' as postulated under Section 2(c) of the P.C.Act.

8. As seen from the testimony of P.W.9, at the relevant point of time, he worked as Director of Town Planning and Country Planning, Andhra Pradesh, Hyderabad. His testimony further reveals that he issued Ex.P.12-proceedings to prosecute A.O.1. In the cross-examination of this witness, nothing was elicited to shake his testimony. The testimony of P.W.9 clinchingly establishes that he issued Ex.P12-sanction order after following

due procedure. The trial Court considered the material available on record and arrived at a conclusion that Ex.P12-sanction order is a valid one.

9. Before advertng to the facts of the case on hand, it is apposite to refer to the case law in **P.Satyanarayana Murthy v District Inspector of Police, State of A.P.**¹, **Sita Ram v State of Rajasthan**², **C.M.Girish Babu v CBI, Cochin, High Court of Kerala**³, **Rakesh Kapoor v State of Himachal Pradesh**⁴, **B.Jayaraj v. State of A.P.**⁵, **M.R.Purushotham v State of Karnataka**⁶ and **C.Sukumaran v State of Kerala**⁷. The following principles can be deduced from the above decisions:

- 1) Proof of demand and acceptance of illegal gratification by the Accused Officer is *sine qua non* to convict him under Sections 7 and 13 of the Prevention of Corruption Act;
- 2) Mere recovery of tainted money from the possession of the Accused Officer itself is not sufficient to convict him under the provisions of the Prevention of Corruption Act; and
- 3) It is only on proof of acceptance of illegal gratification, presumption can be drawn under Section 20 of the Prevention of Corruption Act, that such gratification is received for doing or forbearing from doing any official act.

10. Let me consider the facts of the case on hand in the light of the above legal principles.

¹ (2015) 10 SCC 152

² (1975) 2 SCC 227

³ (2009) 3 SCC 779

⁴ (2012) 13 SCC 552

⁵ (2014) 13 SCC 55

⁶ (2015) 3 SCC 247

⁷ (2015) 11 SCC 314

11. As seen from the testimony of P.W.1, he submitted Ex.P.9(a)–Application on 13.5.1994 to Commissioner, Anantapur Municipality, seeking permission to install 15 HP electric motor in order to start baby oil expeller in his factory. As per the testimony of P.W.1, A.O.1 visited his factory on 15.5.1994 and at that time he was not present. His testimony further reveals that at the time when A.O.1 inspected the factory on 15.5.1994, his wife was present. For one reason or the other, the prosecution did not choose to examine the wife of P.W.1. Except the self-served testimony of P.W.1, there is no convincing evidence to establish that A.O.1 visited the factory premises of P.W.1 on 15.5.1994. The trial Court, after considering the material available on record, arrived at a conclusion that there is no evidence on record to establish that on 15.5.1994 A.O.1 visited factory premises of P.W.1. I am fully endorsing the finding recorded by the trial Court on this aspect.

12. As per the prosecution version, the trap was conducted on 19.5.1994 at the Office premises of A.O.2 in Municipal Office, Anantapur and at the shop of P.W.2. If the testimony of P.Ws.1, 3 and 7 is taken into consideration, pre-trap proceedings were conducted in the Office premises of ACB, Anantapur on 19.5.1994. Ex.P.5 is the pre-trap proceedings. As per the testimony of P.W.1, he along with P.W.6 visited Municipal Office, Anantapur, as directed by P.W.8 on 19.5.1994 at about 4.30 pm. His testimony further reveals that at the request of A.O.1 he kept M.O.1 tainted money on the table of A.O.2 and gave signal to P.W.8. As seen from the testimony of P.W.5 and 8, on receiving

signal from P.W.1, they went inside the Municipal Office and identified A.O.1. Their testimony further reveals that in the presence of P.Ws.3 and 7, P.W.8 conducted sodium carbonate solution test on the left hand fingers of A.O.1, which turned into pink colour. M.Os.4 to 7 are the resultant solutions. The testimony of P.Ws.3 and 7 further reveals that sodium carbonate solution test was conducted on the right hand fingers of A.O.2. M.O.8 is the resultant solution. Their testimony further reveals that P.W.8 seized M.O.1-tainted money from the possession of P.W.2 and conducted sodium carbonate solution test. M.Os.11 and 12 are the resultant solutions. For one reason or the other, P.Ws.3 and 7, who are the mediators at the time of conducting trap did not support the case of the prosecution. P.Ws.3 and 7 turned hostile to the prosecution case. As seen from the testimony of P.W.2, by the time the raid party came to his house, he completed his dinner. If the testimony of P.W.2 is taken into consideration, he washed his hands before and after the dinner. In such circumstances how his fingers turned into pink colour is not properly explained by the prosecution. Except the testimony of P.Ws.5 and 8, who are the Investigating Officers, there is no other convincing evidence to establish the sodium carbonate solution test was conducted on the fingers of A.O.1, A.O.2 and P.W.2 by following due procedure. It is not safe to place much reliance on the uncorroborated testimony of Investigating Officer.

13. Suffice it to say, pendency of official favour before a public servant is a condition precedent to convict him under the P.C. Act. It is not in dispute that P.W.1 submitted Ex.P9(a)-

application for installation of 15 HP motor in place of existing 10 HP motor in his factory for the purpose of baby oil expeller. As per the testimony of P.W.1, P.W.8 seized Ex.P1 File in Municipal Office, Anantapur. There is no whisper in the testimony of P.W.1, from whose custody Ex.P.1 File was seized by P.W.8. As per the testimony of P.W.8, he broke open the office room of A.O.2 in the presence of P.W.4-Municipal Commissioner. The testimony of P.W.4 clearly reveals that he was present at the time of breaking open the room of A.O.2. There is no whisper in the testimony of P.W.4 that P.W.8 seized Ex.P1 File in his presence. There is also no whisper in the testimony of P.W.5 that P.W.8 seized Ex.P1 File in his presence. As per the testimony of P.W.8, he seized Ex.P1 File from Municipal Office, Anantapur. The testimony of P.W.8 that he seized Ex.P1 File from the Municipal Office, Anantapur is not supported by P.Ws.3, 4 and 7. As observed earlier, P.Ws.3 and 7, who are the mediators, turned hostile to the prosecution case. There is no whisper in the testimony of P.W.8 from whose custody he seized Ex.P1 File.

14. Even assuming, but not conceding, that Ex.P1 File was seized from the Office room of A.O.2, that itself is not sufficient to arrive at a conclusion that Ex.P1 File was pending with A.O.1. Basing on the testimony of P.W.9, the trial Court made an observation that Ex.P1 File was placed before A.O.1 on 16.6.1994. The prosecution has to establish that Ex.P1 file was pending with A.O.1 at the time of the raid i.e., on 19.5.1994. The prosecution failed to establish that A.O.1 visited the factory premises of P.W.1 on 15.5.1994. Similarly, the Prosecution also

failed to establish that Ex.P1 File was seized from the custody of A.O.1 in order to establish pendency of official favour before A.O.1 as on 19.5.1994. The material placed before the trial Court falls short to establish that official favour of P.W.1 was pending before A.O.1 as on 19.5.1994. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that no official favour was pending before A.O.1 as on the date of the trap i.e., on 19.5.1994. I am fully endorsing the findings of the trial Court on this aspect.

15. It is needless to say that mere recovery of tainted money from the possession of public servant by itself is not sufficient to convict him under the provisions of the P.C. Act. The demand and acceptance of illegal gratification by a public servant is *sine qua non* to convict him. As per the prosecution version, A.O.1 demanded illegal gratification from P.W.1 on 16.5.1994 and 18.5.1994 in the presence of P.W.6 in Municipal Office, Anantapur. As observed by the trial Court, P.W.1 did not inform the higher officials of A.O.1 about his demand of illegal gratification from P.W.1. Mere non-informing of the same fact to higher officials itself is not a valid ground to disbelieve the prosecution version. However, it should be noted that the Court has to consider the totality of the facts and circumstances in order to arrive at a just and reasonable conclusion.

16. It is a settled principle of law that the Prosecution has to establish its case beyond all reasonable doubt. If the version put-forth by the prosecution creates any amount of doubt, the

accused officer is entitled for the benefit of doubt. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish that he visited the Municipal Office, Anantapur on 16.5.1994 and 18.5.1994. As per the prosecution version, P.W.1 visited the Municipal Office, Anantapur on 16.5.1994 and 18.5.1994 along with P.W.6. For one reason or the other, P.W.6 did not support the case of the prosecution. Learned Public Prosecutor, with the permission of the trial Court, cross-examined P.W.6 at length but nothing was elicited in support of the prosecution case. The testimony of P.W.6 is no way helpful to the prosecution that he along with P.W.1 visited the Municipal Office, Anantapur on 16.5.1994 and 18.5.1994. The testimony of P.W.6 is no way helpful to establish that A.O.1 demanded the bribe amount of Rs.10,000/- from P.W.1. In the cross-examination, P.W.6 categorically stated that A.O.1 directed P.W.1 not to visit the Office as he has not received his application. If the testimony of P.W.6 is taken into consideration, P.W.1 kept M.O.1 tainted money on the table of A.O.2 and concealed the same by keeping a book on it. The raid party entered into the chambers of A.O.2 within no time, but failed to seize M.O.1 tainted money kept on the table of A.O.2 under a book. The prosecution failed to establish the exact time when A.O.2 left the office. All these aspects create a doubt in the mind of the Court with regard to conducting of trap. There is no consistency in the testimony of P.Ws.1 and 6 with regard to the alleged demand of bribe by A.O.1 from P.W.1. As observed supra, the prosecution failed to prove that Ex.P1 File was pending before A.O.1 at the time of the raid. The Court shall not

lose sight of all these aspects while considering the version put-forth by the prosecution.

17. I have carefully perused the testimony of P.W.8. He is not in a position to say whether he arrested A.O.1 on 19.5.1994 or 29.5.1994. He has given two different versions with regard to exact date of arrest of A.O.1. A perusal of Exs.D1 and D2 reveals that A.O.1 issued telegrams to the higher officials about the high-handed behaviour of P.W.8. Of course, P.W.8 and P.W.5 denied the suggestion that they received copies of Exs.D1 and D2 on 20.5.1994. Admittedly, Ex.P7 mediators' report does not bear the signature of A.O.1. When P.W.8 asked A.O.1 about M.O.1-tainted money, he spontaneously denied the same. This fact was admitted by P.W.8 in his cross-examination. M.O.1 tainted money was admittedly recovered from the shop of P.W.2. In view of the same, it can be held that A.O.1 demanded and accepted illegal gratification from P.W.1 in order to process his application.

18. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited *supra*, I have no hesitation to hold that the prosecution failed to establish the guilt of A.O.1 beyond all reasonable doubt. The Special Court has assigned reasons much less valid reasons to its findings. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. Therefore, I am unable to accede to contention of the learned Special Public Prosecutor that the findings recorded by the Special Court are perverse. There is no illegality or irregularity in the findings recorded by the trial Court. I am fully endorsing the findings

recorded by the trial Court. There are no grounds much less valid grounds to interfere with the findings recorded by the trial Court. The appeal lacks merits and is liable to be dismissed.

19. In the result, the appeal is dismissed. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T. SUNIL CHOWDARY, J

February 26, 2018

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