SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1077 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused, aggrieved by the Judgment, dated 03.08.2006, passed in C.C.No.19 of 2001 by the Court of Special Judge for SPE & ACB Cases, Vijayawada, by virtue of which the trial court convicted the accused for the offence punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, (for short, "PC Act") and was sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.2,500/- in default to undergo simple imprisonment for a period of three months for the offence under Section 7 of P.C.Act; was sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.2,500/- in default, to suffer SI for three months for the offence under Section 13(1)(d) r/w 13(2) of P.C.Act.

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

Sri Padamata Ramamohana Rao (hereinafter referred to as, "the complainant") owns a residential house at Patamata, Vijayawada. He remodelled his old house into three storied building during the year 1999. In the month of September, 1999, the Revenue Inspector and the accused along with their staff came to his house and took measurements. In the month of March, 2000, a demand notice was served on him fixing his house tax for payment of Rs.1,430/- per half year. It was mentioned in the notice that in case of any objections for the above assessment a representation can be made for reduction of tax to the Commissioner, Municipal Corporation, Vijayawada. As such, the complainant, found that the tax assessment was very high when compared with the neighbouring houses, he made a representation in writing with reasons with a request to reduce the levied house tax. After few days, the accused met the complainant at his house, got it confirmed that he had to put in a representation requesting for reduction of the house tax, and told him that hr only had to process the said application for reduction of the house tax an for that favour he demanded bribe amount of RS.4,000/-, but the complainant did not reply. After two days, again the accused visited the house of the complainant, met him and reiterated to him about his demand of bribe amount of Rs.4,000/- for processing his application. Then the complainant stated that he could not give the bribe. But on 30.04.2000 the accused went to the house of the complainant and once again demanded for the bribe amount. On that, the complainant told the accused that he was in financial trouble and hence, he could not give any bribe amount. Finally, the accused still insisted for payment of at least of Rs.3,000/- as bribe or else his work would not be processed. Then, having no other option, the complainant reluctantly agreed to pay the bribe amount of Rs.3,000/-. Then the accused further stated that he would come on 03.05.2000 evening to his house to take the bribe amount and later complete his work. As the complainant was unwilling to pay the bribe amount to the accused, he proceeded to the office of the Deputy Superintendent of Police (DSP), ACB, Vijayawada, and reported the aforesaid matter by way of written report against the accused on 02.05.2000 at 09:00 AM. After causing enquiries and after observing all formalities, the DSP registered the report of the complainant as a case in Crime No.6/ACB-VJA/2000 under Section 7 of the Prevention of Corruption Act, 1988.

On 03.05.2000 at about 08:50 PM, the DSP has trapped the accused at the residence of the complainant when he further demanded and accepted the bribe amount of Rs.3,000/- from the complainant, as gratification other than legal remuneration taking advantages of his official position to do the above mentioned official favour. When both the hand fingers of the accused subjected to the chemical test, they proved positive. When asked by the DSP, about the tainted amount, the accused produced a wad of currency notes from his right side pant pocket before the mediators. The serial numbers of the tainted currency notes found tallied with the serial numbers of the currency notes produced by the complainant during the pre trap proceedings. Chemical test on the innerlinings of the right side pant pocket of the accused also proved positive. The DSP seized the tainted amount of Rs.3,000/-, pant of the accused, certain connected papers and other materials. After due investigation, the DSP arrested the accused and released him on self bail and laid charge sheet for the offences under Sections 7 and 13(2) r/s 13(1)(d)(ii) of the Prevention of Corruption Act, 1988.

3. The trial court has taken the case on file for the same offences and after complying with all the legal formalities, charges were framed for the same offences against the accused. The plea of not guilty by the accused was recorded and trial was conducted on his claim, during which PWs.1 to 7 were examined and Exs.P1 to P12 and MOs.1 to 8 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.PC. He denied the truth of his evidence and did not chose to adduce any oral or documentary evidence.

4. The lower court, after evaluating the evidence and the material on record, passed the impugned judgment. Aggrieved by the said judgment, this appeal is preferred on the grounds that the trial court should have seen that the ingredients to constitute the said offence are not made out by any legal and reliable evidence. The trial court failed to see that the accused could not have done any favour to the complainant as he cannot reduce the quantum of tax to be paid. The trial court should have seen that the appellant visited the house of the complainant as he was called to his house for payment of tax. The trial court failed to see that PW2 did not support the prosecution case and he was treated hostile by the prosecution./ the trial court should have seen that the Accused asked the complainant to pay house tax @ Rs.1,430/- for half year and water tax @ Rs.40/- per month from 01.10.1999 and that the amount if calculated would come toRs.3,100/0 which is

equivalent to the amount alleged to have been accepted as bribe. The trial court should have seen that on the date of trap, the complainant paid Rs.3,000/- as tax when asked about Rs.100/- the due amount he said he will bring it, went out and gave the signal, immediately 7 or 89 officers came and caught hold of the accused. The trial court erred in not giving any importance to the version of the accused that he gave spontaneous explanation when the trap party entered the office.

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

6. The counsel for the appellant submits that the prosecution absolutely failed to prove that there was any official favour pending with the appellant as on the date of offence or even prior to that and hence, the judgment of the trial court is liable to be set aside.

7. The Public Prosecutor, on the other hand, contends that the assumption made by the trial court that usually the bill collectors, submit reports for representation of house tax is on proper lines and hence, the judgment has to be set aside.

8. Based on the above contentions and the material on record, the following points are framed for consideration:

1. Whether the prosecution could prove that the amount given by PW1 to the appellant is towards any official favouir and whether the guilt of the accused stands proved beyond all reasonable doubt

2. To what relief

<u>POINT No.1</u>: -

9. PW1, who is the complainant, reiterated his stand taken in the complaint. According to his evidence, the house tax of Rs.1,430/- per half year was fixed for his remodelled old house, which was converted under the storeyed building. There was a mention in the notice that the objections can be made with regard to the imposition of the said tax. As such, a representation was given by him under acknowledgment. The accused was the then concerned Bill Collector, who used to serve the demand notice and collect the tax. Ten days after the receipt of acknowledgment i.e., in the same month, the accused came to the house of PW1 and enquire about his representation. He further stated that in order to reduce the tax levied for his house he has to pay Rs.4,000/- as bribe. On that, PW1 expressed his inability to pay the demanded bribe amount, then the accused left. On 30.04.2000, the accused came to his house and again demanded Rs.4,000/- bribe amount for reduction of the house tax levied and stated that it is the last chance for him for getting reduction. He reduced the bribe amount of Rs.3,000/- PW1 did not agree for the same and thereby the accused left under compelled circumstances. He approached the office of ACB and represented the same by way of a written report, which is Ex.P1. Then trap proceedings were arranged, tainted amount was given to PW1 to be used during the trap proceedings, mediators were secured. On 02.05.2000, accused came to his house and demanded bribe amount, on that he asked him to

come to his house on 03.05.2000 after 07:00 PM in order to comply his demand, which was informed by him to the DSP on 03.05.2000. At about 06:30 PM, all of them proceeded to the house of PW1. At about 08:00 or 08:30 PM, the accused came to his house i.e., to the 2nd floor where he was residing. They both sat on a chair in his varandah. The accused asked for a glass of water and he provided the same. The accused asked him about the bribe amount, he gave the tainted amount of Rs.3,000/- to him, who took the same with his right hand and counted the same and kept it on his right side pant pocket. Then he gave a pre arranged signal to the trap party. Thereby, the trap part went inside his house. One and half hour thereafter PW1 was called inside and enquired what was transpired. He narrated everything to the DSP, Mahazarnama was prepared. In the cross-examination, he admitted that he did not stage before the Magistrate that the accused came to the house on 03.05.2000 and made demand of bribe of Rs.3,000/-. He admitted that even after the trap his house tax was not reduced. It was suggested to him that on the date of trap, the accused asked him only house tax for one year and water tax for six months amounting to Rs.3,100/- and that after he gave Rs.3,000/- the accused counted it and pointed it that Rs.100/- is less and then he informed the accused that he would get the remaining Rs.100/- and asked him to wait and went down from his house and came along with the ACB officials.

10. It is natural that the tax would not be reduced even after the trap proceedings. A suggestion given to PW1 also does not

appear to be cogent. The house tax according to PW1 is Rs.1,430/- per half year and the water tax as elicited in the cross-examination of PW1 is Rs.40/- per month. The house tax for six months is Rs.1,430/- and for one year it would be Rs.2,860/-. When the demand of house tax is for one year, there is no reason for the demand for water tax being only for six months. It appears that in order to make some defence, the suggestion was made.

11. The evidence of PW2, who is the neighbour of PW1, is that he was paying half yearly tax of Rs.1,700/- and he owns two portions residential house and the house of PW1 is intervened by a bazaar. He is, however, declared hostile by the prosecution. PW3, who is the Assistant Commissioner of Circle III, Patamata, Vijayawada city, during the relevant period, deposed that the accused worked under him and was incharge of the ward in which PW1 was residing. The duties of the accused are to serve the demand notices, collect the assessed taxes, besides informing the list of newly constructed buildings, additions, alterations etc., in his area. If anybody applies for revision of their respective house taxes, the Commissioner will receive them and forward them to their Assistant Commissioner concerned. The Assistant Commissioners will prepare a list of such revision petitions by entering the same in a register and place them after scrutiny before the Commissioner and obtained the hearing date. PW2 came to know about the trap proceedings against the accused. He states that in respect of the revision of house tax of PW1 he did not receive the revision application filed by him

before the Commissioner for scrutiny as on the date of trap. In the cross-examination, one material fact was elicited, which is the water tax and house tax collected by the Bill Collector. The relevant bill books were available with them in order to pass a receipt. The bill collector has no role in respect of enquiry of the revision petition. He need not submit any report regarding revision petition. He admitted that either the Commissioner or the Deputy Commissioner will reduce or enhance the house tax after hearing the revision petitions.

12. PW4 is the Superintendent, Municipal Corporation, Vijayawada, who issued the sanction orders for prosecuting the accused. PW5 is the ACTO, BC, Vijayawada during the relevant period, who acted as mediator for the trap proceedings. He corroborated the evidence of PW1 with regard to the pre-trap proceedings. Speaking about the trap proceedings, he stated that after receiving pre-arranged signal from PW1, they went inside the house of PW1, the DSP introduced himself to the accused and disclosed his identity. He further deposed that the accused was found in shivering mood and try to rub his hands with his pant. On that, the DSP instructed the accused to keep his hands apart. He conducted S.C.Solution test to both hand fingers of the accused which proved positive. He also recovered the cash from the accused, which was Rs.3,000/-. In the cross-examination, he admitted that there are some corrections in Ex.P9. PW6, who is the DSP, ACB, Vijayawada during the relevant period, corroborated the evidence of PWs.1 and 5 with regard to the pre and post trap proceedings.

13. As already observed, the material fact, on which the prosecution fails is one, which was elicited in the cross-examination of PW3. For a presumption to be drawn under Section 20 of the Act, it is necessary that the reward, as mentioned in Section 7, must have been proved to have been received by the accused. Section 7 of the Act, captioned as, "Public servant taking gratification other than legal remuneration in respect of an official act."

14. Hence, the proof of official act being pending with the accused is imminent for the prosecution to succeed in proving the guilt of the accused. The very reward or amount that is received by the accused should be to do an official act or to forbear to do any official act. The evidence of PW3 is very categorical that the Bill Collector has no role in respect of enquiry of the revision petition.

15. The lower court has taken judicial notice of the fact that the Bill Collector would submit reports to the Commissioners and that they have a say in receiving the house taxes. But the said approach does not find favour with this court. It is for the prosecution to prove through the legal evidence that the accused had role to play in the revision of the tax. Moreover, according to PW1, the tax for half year is Rs.1,430/-. PW2, who is a neighbour, states that tax for his house is Rs.1,700/-, which is more than Rs.1,430/-. The application given by PW1 is to reduce the tax by considering the taxes of the neighbouring houses. But the neighbouring houses seems to be bearing more

taxes than the tax levied for the house of PW1. It would not suffice for the prosecution simply to prove that the accused accepted the amount given by PW1 but it has to prove that the amount was given as a reward for an official act to be done by the accused.

16. Section 20(3) of the Act reads as follows:

> "20. Presumption where public servant accepts gratification other than legal remuneration:
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> (3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

17. The contention of the learned counsel for the accused that the amount given to him is towards the tax, which is due for one year. Though the said contention is cogent or not, he probabilises his defence by virtue of the case being only for Rs.1,430/- per half year. Hence, considering the triviality of the amount and considering the evidence of PW3 that the accused does not have any role in the revision of taxes, this court opines that a benefit of doubt needs to be given to the accused.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded against the appellant for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act by the Court of Special Judge for SPE & ACB Cases, Vijayawada, in C.C.No.19 of 2001, by judgment, dated 03.08.2006, are hereby set aside and consequently the appellant is acquitted of the charges leveled

against him. The appellant/accused shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

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T. RAJANI, J

October 10, 2018
LMV