

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1507 OF 2009

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 15.10.2009, passed in C.C.No.18 of 2005, by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Courts, Hyderabad, by virtue of which the trial court convicted the accused for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced him to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for one month for the offence under Section 7 of the Act and sentenced to undergo RI for one year for the offence under Section 13(1)(d) of the act and 13(1)(d) r/w 13(2) of the Act and also to pay a fine of Rs.1,000/- in default to pay fine amount to under Rigorous imprisonment for one month.

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

One S.Naimathullah Nizam, who is a resident of Chanchalguda, Hyderabad, lost his LLB Degree and Transfer Certificate issued by Padala Rama Reddy Law College while proceeding from Karkhana towards jubilee Bus Station, Secunderabad. Therefore, on 21.02.2004, he went to Karkhana Police Station, Secunderabad and submitted an application to the

Sub Inspector of Police, who is the accused herein, regarding loss of his original certificates and requested to enquire and issue Police Certificate and then the accused asked him to meet him after two days. Thereafter on 24.02.2004, while LW1 went to the police station and met the accused, he demanded a bribe of Rs.1,000/- for the issue of police certificate and issued acknowledgment for his application. LW1, not willing to pay the bribe amount to the accused, on 25.02.2004 at 10:45 AM, lodged a complaint with the Deputy Superintendent of Police (DSP), Anti Corruption Bureau alleging the demand of illegal gratification by the accused and after due verification, the DSP registered said complaint as a case in crime No.6/RCT-CR1/2004 against the accused under Section 7 of the act and took up investigation.

During investigation, the DSP, secured the mediators; laid trap proceedings against the accused; recovered the tainted currency notes from the possession of the accused; examined the witnesses and recorded their statements; arrested the accused and produced before the court seeking for remand and later on concluding the investigation filed charge sheet.

3. The trial court took the case on file and after complying with all the legal formalities, framed charge against the accused for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. During trial, PWs.1 to 7 were examined and Exs.P1 to P13, and MOs.1 to 9 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 the evidence and on his behalf, DWs.1 and 2 were examined and Exs.D1 to D3 were marked.

4. After considering the evidence and material on record, the lower court passed the impugned judgment, convicting the accused, as aforementioned.

5. Aggrieved by the said judgment, this appeal is preferred on the grounds that the trial court failed to see that the ingredients to constitute the said offences are not made out by any legal and reliable evidence. The trial court erred in placing reliance on the highly interested and discrepant testimony of PWs.1, 4 and 6 of the prosecution. The trial court has erred in coming to the conclusion that the appellant has demanded and accepted an amount of Rs.1,000/- towards bribe for issuing Ex.P4 police certificate. The trial court has failed to see that there is no official favour relating to PW1 to issue police certificate and that he neither demanded any amount nor accepted the same from PW1. The trial court should have seen that Ex.P8 sanction order was mechanically issued without application of mind and the same is not valid under law. The trial court erred in not attaching any importance to the evidence of the defence witness. The trial court has failed to take note that police certificate can be issued by any police person of the concerned police station and it is not necessary that the appellant alone has to issue the same. The trial court has grossly erred in coming to the conclusion that Ex.P1 dated 21.02.2004

was received by the appellant on 24.04.2004, though it was received on 25.02.2005, initialled by the appellant and a GD entry was made on the same date. The trial court failed to take note that the appellant gave spontaneous explanation at the time of post trap proceedings itself that he received Ex.P1 on 25.02.2004. the trial court failed to appreciate the fact that the appellant was deputed on official duty from 23.02.2004 to 25.02.2004 morning and was at Nalgonda, as such the appellant was not in the police station on 24.02.2004 as such the question of the appellant acknowledging Ex.P1 on 24.02.2004 does not arise and the same goes to prove that Ex.P1 was acknowledged on 25.02.2004 and the same was entered in the GD. The trial court failed to appreciate that on 21.02.2004 there were proceedings of the city police, directing the appellant to appear before the ACP by 10:00 AM on 21.02.2004, in connection with bandobusth duty for Vijayabheri which meeting concluded at midnight, as such the question of PW1 meeting the appellant on 21.02.2004 does not arise, as such the version of PW1 that he met the appellant on 21.02.2004 is nothing but concocted, as such his evidence cannot be believed. The court below ought to have disbelieved the evidence of the complainant PW1 as he is habituated to give complaints to ACB, implicating public servants. The court below ought to have seen that the appellant came to the police station in civil dress and his police uniform was pegged in his chambers and during the time the appellant went to the computer room and got prepared the police certificate Ex.P4, by PW2, and came back to his chambers to

hand over the same to PW1, obtained acknowledgment of PW1 and handed over the acknowledgment to PW2 in the computer room and during the interregnum period in the absence of the appellant, PW1 who was sitting in the chambers planted the tainted amount in the pocket of the appellant's police uniform to show that the appellant has taken the amount.

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

7. The only point urged by the counsel for the appellant is with regard to the plea of alibi that was set up as a defence. He contends that by virtue of the GD Entry, it is evident that the accused was not present in the office on the alleged date of demand, which was on 24.02.2004.

8. The Public Prosecutor, on the other hand, submits that the GD Entry only shows that at 02:30 AM, the accused went to Nalgonda to effect the arrest of a person and the said entry would not be sufficient to disprove the fact that the accused was present in the office on 24.02.2004 at 12:45 noon, at which time the accused allegedly made a demand from PW1.

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

1. Whether the prosecution proved the demand by the accused and whether the plea of alibi is established by the accused.

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

3. To what result.

POINT Nos.1 and 2: -

10. The appellant, at the stage of appeal, filed an application viz., IA No.1 of 2018, for receiving the additional evidence, which is the extract of General Diary. Though there are absolutely no reasons for allowing the said petition, this court, opining that the fact proposed to be proved through the said document might help the court in appreciating the facts, allowed the petition. The GD entry shows that in the early hours of 25.02.2004, the accused went to Nalgonda to effect the arrest of a person at Tulsinagar, Nalgonda. It does not help the accused in disproving that he was not present in the office on 24.02.2004, which is the alleged date of demand. It is by all means possible for a person to be in the office on 24.02.2004 at 12:45 noon and to go to Nalgonda by 02:30 hours on the next day. The positive evidence of PW1 with regard to demand has the support of the evidence of the other witnesses. The said GD extract would not tilt the scale of weight of the evidence in favour of the accused, if the said evidence is accepted.

11. According to PW1, he is a practising advocate. He intended to apply for LLM Entrance examination and in that process, while he was carrying LLB Degree and transfer certificate, he lost them on his way. Then he approached the college and the college wanted a Certificate from the police authorities with regard to the loss of the said certificates. It is in that process that he approached the accused on 21.02.2004 and made an application

by way of Ex.P1, for which the accused asked him to come to the police station after two days. Accordingly, PW1 went to the police station on 24.02.2004 and enquired with the accused about his application. Then the accused demanded Rs.1,000/- for issuing required certificate. As PW1 did not want to pay the said bribe amount, he approached the DSP, ACB. In the cross-examination, it was elicited that after accepting the currency notes, the accused went into the writers' room and came back within few minutes and gave him the Certificate, which was duly signed by him, after obtaining acknowledgment. The original certificate was given to the DSP and Xerox copy was given to PW1.

12. From the above evidence of PW1, it is clear that the certificate was given to him by the accused, only on the date of trap and that the same was recovered from him by the DSP, on the spot. PW2, though was not declared hostile by the prosecution, stated certain acts, which are inconsistent with the prosecution case. According to him, the accused was the police constable at Karkhana during the relevant period. On 25.02.2004, the accused gave Ex.P1 application, given by PW1, to him for making GD entry. On the basis of the said evidence of PW2, the counsel for the appellant contends that the evidence of PW1 loses its credibility, as according to PW2, on 25.02.2004, the accused gave Ex.P1 application, given by PW1, for making GD entry and Exs.P3 and P4 would show that the complaint given by the complainant is on 25.02.2004. Ex.P3 is a Certificate issued by the Sub-Inspector of police stating that on 25.02.2004

at 16:00 hours, the complainant came to the police station and lodged a complaint stating that he lost his original degree certificate. But, a comparative reading of the evidence of PW1 and Exs.P3 and P4 would clear the ambiguity that was projected by Ex.P3. Ex.P1, which was lodged by PW1, stating that he lost the certificate, is on 21.02.2004 and it was addressed to the Station House Officer, Karkhana police station. The evidence of PW2 only shows that the said complaint given by PW1 was handed over to him on 25.02.2004. He does not state that the complaint given by PW1 itself is on 25.02.2004. It has to be understood that the certificate mentions a mistaken fact that PW1 came and lodged the complaint on 25.02.2004. According to the evidence of PW2, the accused asked him to make a GD entry on 25.02.2004 by handing over the complaint given by PW1. His evidence also shows that on 27.02.2004 the accused came to his office and instructed him to prepare police certificate for the loss of LLB Degree original and TC Certificate of PW1 and accordingly he prepared the said certificate and took print out in duplicate. By the time he was taking out the print, the accused was sitting in his room. After preparing the certificate he handed over the same to the accused. The accused left the room and returned within ten minutes and gave the acknowledgment of PW1.

13. Hence, the evidence of PW2 would lend ample support to the evidence of PW1, that the accused issued the certificate just prior to the trap. The main emphasis of the appellant's counsel is on one sentence, which was elicited in the cross-examination of

PW2, which is that he does not remember the date, but one day before 25.02.2004, the accused has gone to Nalgonda in connection with a case, for investigation purpose. The entire argument of the appellant's counsel revolved around this one sentence in the cross-examination of PW2. The contention is that one day before 25.02.2004 would be 24.02.2004 and hence, the evidence of PW1 that the accused was present in his office on 24.02.2004 at 12:45 noon and made a demand, cannot be believed. But, as already observed, the GD entry, which was made on 24.02.2004, is that PC 309 is relieved by PC 1967. But the time is not mentioned, in which circumstance it is possible to assume that the said relieving is after 12:45 noon and the GD entry on 25.02.2004 only shows that the accused was at Nalgonda at 02:30 AM. The said fact does not affect the evidence of PW1 with regard to the demand.

14. PW3, who is a police constable, Karkhana police station, during the relevant period, did not support the case of the prosecution and he was declared hostile. But his evidence shows that on 27.02.2004, he was on guard duty at 06:00 PM and continued till 09:00 PM. At about 06:30 PM, the accused came to the police station on his own motor cycle and went straight into his room. Two persons came to the police station after about 15 minutes of the arrival of the accused and the said two persons went out of the police station after 15 minutes and thereafter about 6 persons entered into the police station, who were informed to be the ACB Officials. Hence, the chief examination of PW3, who is a hostile witness, supports the case of the

prosecution to the extent of PW1 going inside the office of the accused and meeting him on the date of the trap.

15. PW4, who is a mediator for the trap proceedings, after speaking about the pre-trap proceedings, narrates about the trap proceedings. He speaks about PW1 going into the office of the accused and returning after few minutes and giving a prearranged signal. Then they went inside the office of the accused and the accused admitted that he accepted the amount, then chemical test was conducted on his fingers and it turned positive. The tainted amount was seized from the accused. The defence that was taken by the accused is reflected in the suggestion given to PW4 which is that the accused came to the police station in civil dress and he wore uniform in the police station and that he was unaware as to how the tainted amount came into his right side pant pocket and that he took out his purse and other articles from his civil dress and kept the same in his pant pocket, after wearing the uniform. When no motives were made out against PW1 to falsely implicate the accused, the said version of the accused only stands as a concoction. Hence, the evidence of the prosecution amply proves the guilt of the accused.

16. Further, the call records, which were collected by PW7, who is the Inspector of Police, ACB city range, also show that calls were received by PW1 on his cell phone. The evidence of DWs.1 and 2, however, does not inspire confidence. DW1, the Secretary, AP bar council, states that there is no advocate on

rolls of the bar counsel with the name of the complainant and the complainant was enrolled on 09.04.1999 as per the rolls. The said fact does not have any bearing on the case as the reason for which PW1 approached the accused is for issuance of a certificate that he lost his LLB Certificate. It is possible that he must have enrolled himself on 09.04.1999 and later while proceeding on 20.02.2004, he lost his certificate.

17. The evidence of DW2, who is the Principal of Padala Rami Reddy college, from which college PW1 passed out LLB Course, is that after verification of the records, he did not find that PW1 filed any application on 20.02.2004 for issuance of LLB Certificate. But, PW1 does not state that he made any application in writing to the college. Hence, the evidence of DW2 does not in any way affect the evidence of PW1.

18. In the light of the above appreciation of the evidence, this court holds that the prosecution proved the guilt of the accused beyond all reasonable doubt and hence, the judgment of the court below needs no interference.

19. Accordingly, points 1 and 2 are answered.

POINT No.3: -

20. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence, imposed against the appellant, by Judgment, dated 15.10.2009, passed in C.C.No.18 of 2005, by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Courts, Hyderabad.

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

T. RAJANI, J

December 12, 2018
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