SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1752 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 19.12.2006, passed in C.C.No.11 of 2004, by the Court of Special Judge for CBI Cases, Visakhapatnam, 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.500/- in default to suffer simple imprisonment for one month for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Act.

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

The accused worked as Manager (Estates), ONGC, Rajahmundry from 03.08.2003 to 09.12.2003. One N.V.V.Durga Rao, who is a temporary employee of the Oil and Natural Gas Corporation (ONGC), Rajahmundry was working under the accused and is the younger brother of one N.Srinivas, the complainant herein, did grass/bush cutting work in ONGC, Rajahmundry on contract in the year 2003 and an amount of Rs.34,230/- was paid to him by the accused. While so, the ONGC decided to have a provisions store in its base colony, as a welfare measure and the committee, one of its member being the accused, was consulted and he decided the terms and conditions for the party to be selected for allotment of the provisions store. The complainant and some others filed application for allotment of the said shop. The brother of the complainant requested the accused for recommending his name, on 1.11.2003, for which the accused demanded a bribe of Rs.10,000/-. But PW2 expressed his inability to pay the said bribe amount. Thereafter, again on 03.11.2003 when PW2 requested the accused to recommend the name of PW1, the accused demanded bribe amount of at least Rs.5,000/-. When PW2 expressed his inability to pay even the said bribe amount, the accused threatened him that if the bribe amount was not paid to him on or before 04.11.2003, he would ensure that the provisions store was not allotted to PW1. PW2 informed all these facts to his brother. As PWs.1 and 2 were not interested to pay the bribe amount to the accused, they lodged a complaint before the Inspector of Police, CBI, Visakhapatnam, which was registered as a case 27(A)/2003 against the accused, for the offence under Section 7 of the Act.

During investigation, the Inspector of Police, CBI, Visakhapatnam, secured the mediators; laid trap against the accused; conducted sodium carbonate test on the fingers of the accused; arrested the accused; seized the material objects and the relevant records.

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 9 were examined and Exs.P1 to P12, and MOs.1 to 5 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.P.C. He denied the truth of the evidence and on his behalf, DW.1 was examined and Ex.D1 was 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 curt ought to have seen that the purpose of demand said to have been made by the appellant has not been proved and more over PW2 himself has admitted that the appellant is the competent authority to recommend his brother's application and by 03.11.2003 he came to know through the committee members, that they have taken a decision to call for fresh tenders. The trial court should have seen that in view of the admissions made by PW2 during cross examination, he need not approach PW7 the trap laying officer. The trial court erred in saying that there is no motive to PW2 to get the appellant entrapped, for the reason that it was suggested to him that he started nominating in the office and he never

used to care the appellant. In fact, after the trap incident, he was transferred to medical department of ONGC as admitted by him. The trial court erred in saying that the theory of loan is an after thought, for the reason that soon after the trap the appellant submitted Ex.D1 to PW8, wherein he had mentioned that PW2 had taken Rs.5,000/- as hand loan, in the month of September, 2003. The trial court should have seen that PW2 gave the pre-arranged signal after long lapse of time and that there is no explanation for the delay. The trial court failed to give any importance to the evidence of DW1, who was present all through during post trap proceedings even as per the prosecution case. The trial court failed to appreciate the judgments of this court as well as of the Supreme Court on the point that the appellant was not competent to do any favour as admitted by PW2 and that too PW2 is not an outsider unlike in most of the cases. The trial court erred in saying that the appellant had accepted the amount as bribe but not towards repayment of loan, for the reason that the prosecution has filed to establish their case beyond all reasonable doubt.

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

7. The counsel for the appellant contends that the evidence adduced by the prosecution would show that the accused is not responsible for allotment of the shops in respect of which allegedly bribe was given and taken by the appellant. He further submits that the evidence of PW1 is also very shaky with regard

to the demand made by the appellant and that the appellant has given spot explanation that the amount given to him was towards discharge of the loan taken by the accused from him.

8. The Public Prosecutor, on the other hand, submits that the accused has a role to play in the proceedings pertaining to the sanction of allotment of the shops to the public and hence, it has to be assumed, when once the recovery of the tainted amount is proved from the appellant, that the same was received by him, to get an official favour done through the others concerned in the proceedings of the allotment of shops.

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

1. Whether the demand of bribe by the accused is proved by the prosecution beyond all reasonable doubt.

2. Whether any official favour was pending with the accused and whether the explanation given by the accused on the spot is cogent and whether the appellant is entitled for a benefit of doubt.

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

4. To what result.

<u>POINT Nos.1 and 2</u>: -

10. PW1, who is the complainant in this case, was declared hostile by the prosecution as he did not support the facts mentioned in the mediators report and also gave different dates with regard to his brother informing him about the demand of

the accused for bribe. The facts stated by him in the chief-examination are that he did cutting work in ONGC Base Complex at Rajahmundry on a contract and after completion of the said work the ONGC authorities paid bill amount through a cheque. His bother used to work as a stenographer on temporary basis in ONGC Base complex at Rajahmundry. While the shopping complex was under construction in the said base complex, his brother told him that that the shops would be given on rent to outsiders for running business in that complex and advised him that if he establishes provisions store in that complex, it would be useful for his livelihood. Thereupon he submitted the application for allotment of shop to him. He requested his brother to see that somehow the shop is allotted to him, so that his living would be better. His brother told him that he would ask the committee through his sir, Sri R.Vijaya Kumar Babu, who is the accused in this case. On 01.11.2003, his brother came and told him that the accused was demanding Rs.10,000/- for requesting the committee people and that he expressed his inability to pay that much amount. He asked his brother to request his sir again. On 13.11.2003, his brother again told him that the accused asked him to give at least Rs.5,000/-. His brother told him that the accused asked him to pay the amount at his residence. On 14.11.2003, his brother thought over that matter and decided to inform the CBI people and then they approached the CBI People and gave a report. Pre-trap proceedings were prepared, tainted amount was also got ready. At the time of trap, all of them remained in the jeep, while his brother went to pay the amount to the accused. After two or three minutes, his brother came down from the apartment along with the accused and went into the park. Thereafter they both again went to the upstairs of that apartment. Two minutes thereafter his brother came down and told the CBI officials, that he gave the amount. After that, all of them went to flat nO.3 of 2nd floor in Sai Ratna Apartments. The CBI officials showed his identity card to the accused, who was sitting inside and told him that it was learnt that he took money. After that he went out as they were writing something. One hour thereafter he again went to that flat. Even by then, the statement was being drafted. His brother and himself were asked to sign on that statement. They put their signatures accordingly. After that, he and his brother were asked to go away and accordingly they went away. He further deposed that he did not witness any other proceedings which took place and no rough sketch was drawn. He however identified the accused. He further states that about one month after the trap, himself and his brother were called to the CBI office at Visakhapatnam and were enquired about the facts of the case. They narrated all the facts and they were cautioned that there should not be any falsehood in their narrations. They reiterated that there was no falsehood in their narrations. They found that their statements were not reduced into writing. Their signatures were obtained on a blank paper. On that he was declared hostile, but in the cross-examination done by the Public Prosecutor, he admitted that before the CBI Officers he stated that on 03.11.2003 his brother came to him and told him that on

01.11.2003 the accused demanded Rs.10,000/- for recommending for the allotment of the shop premises. He adds that he thought that the said amount was towards bribe only. He further states that the date 04.11.2003, on which the accused asked his brother to come to his house with the money, is correct and that it is not 14.11.2003, as deposed in the examination-in-chief.

In the cross-examination done on behalf of the accused also he reiterated the fact that his brother never told him that the accused was demanding Rs.10,000/- and later he reduced it to Rs.5,000/- for the purpose of requesting the committee people and pay the same to him through PW1. He further states that his brother did not inform him that the accused was demanding the above said amounts from his brother.

11. PW2, who is the brother of the complainant, was also declared hostile. In his examination in chief, he deposed that he used to do the entire typing work in the estate section of ONGC at Rajahmundry. For allotment of the shops in the colony shopping complex the note would be moved in the estate section and it goes to the General Manager, who nominates the member. From the General Manager, the note goes to Finance Department. They also nominate one person and from there the note goes to material management section who also nominates one person and from there the file goes to the Project Head for the approval of that committee. He further deposed hat he was not on regular rolls of ONGC. With regard to the incident, he deposed that he requested the accused to see that his

brother gets the shop premises in the shopping complex of ONGC to run the provision shop. Thereupon the accused asked him Rs.10,000/- towards bribe, to recommend the case of his brother to the general Manager and also to the committee. Then he informed the same to PW1. On 01.11.2003, he requested the accused. He informed PW1 about the transaction on 03.11.2003. His brother expressed his inability to pay that much amount. Again he requested the accused, expressing their inability to pay that much amount. Thereupon the accused told him to bring at least Rs.5,000/- by the evening of 04.11.2003, to his house. He informed his brother that he agreed to pay that amount to the accused. Then both of them decided to pay that amount after informing to the CBI people. Thereafter, the trap was laid. He further deposed that when he offered the amount, the accused took the amount and kept in his pant pocket. As he did not support the case of the prosecution with regard to the seizure of money and colour tests, he was declared hostile.

In the cross-examination done on behalf of the accused, he admits that the committee scrutinises the applications and submits the names of those applicants to the General Manager, who in turn sends the same to Sri Ch.Lal. He admits that as the applications did not come directly, the committee took a decision to call for the application afresh, through sealed covers.

12. Hence, from the above evidence, it can be understood that the application of his brother, which was already given was not considered and fresh applications were called for. Further, the evidence of PW1 does not offer any clarity with regard to the

manner of the demand allegedly made by the accused. PW2 in his evidence also admits that as an Estate Manager, the accused did not have authority to recommend the names of anybody. The accused demanded the amount from him, but he did not tell him that his brother should pay Rs.10,000/- to him. He admits that Ex.P1 was dictated by P.M.Naidu, who is the CBI Official. He states that the accused asked him to bring Rs.5,000/- and the same was informed to Mr.P.M.Naidu. When he questioned them as to for what purpose that amount was demanded, they thought that it was towards bribe. Accordingly, P.M.Naidu dictated Ex.P1 on those lines. Hence, this part of the evidence of PW1 affects his credibility. In his examination-in-chief, he deposed that it is the accused, who demanded the amount towards bribe, but in the cross-examination, he does not assert that the amount was demanded by the accused towards bribe. Moreover, PW1 does not explain as to why the accused took the amount from him, when he does not have role to play in the sanctioning of the shops to the applicants.

13. PW5 speaks about the procedure for allotment of the shops, he being the Manager in the Estate Section during the relevant period. She deposed that she knows the accused and she does not remember in which section he was working as manager when she was in Estate Section. She identified the file which relates to the allotment of provision stores in the colony of ONGC Employee at Rajahmundry which contains her initial for constitution of the committee which will examine the scope of work, rent to be charged, electricity, mode of service etc. The

shopping complex was not constructed by then. Thus by the time she mooted the proposal for constitution of the committee, there were five applications of the respective shop keepers received from Sri Lakshmi Agencies. Teja Groceries, K.A.L.Satyavathi, Sri Sai Kirana & General Stores and others. No action was taken on that applications. They were lying in the file but the committee was constituted with three members, she being one. The accused in his capacity as Manager issued the office order, dated 25.08.2003 constituting the committee. By 25.08.2003 she was the Manager in separate employees cell of ONGC. On 05.09.2003 a note was sent to the Deputy General Manager requesting to complete the construction of the shop at the earliest by conveying the sanctioned amount. Among other recommendations their committee recommended the finalisation of the fixing of agency through tenders, by following existing guidelines/procedure. They also recommended for collection of the security deposit of Rs.10,000/- from each of the allottees of the shops. Those recommendations were made on 03.11.2003. All of the committee members signed the minutes of the Committee meeting, which made the recommendations.

In the cross-examination she admitted that PW2 worked under her when she worked as Manager and as such she has acquaintance with him. She admitted that except giving the office order, dated 25.08.2003, on the basis of approval of the Assistant Manager, the accused did not deal with any of the applications pertaining to the allotment of shop premises. She also admitted that as Manager, the accused cannot recommend any of the applicants to the committee for allotment of the shop premises. She also deposed that in view of their recommendation to call for the tenders, the applications lying in Ex.P6 file has no value at all. She admitted that their recommendations were accepted by the General Manager on 04.11.2003.

14. Hence, from the evidence of PW5, it appears that the applications, which were received from the applicants which includes that of the brother of PW2, were not considered and they were kept in the file and therefore, the tenders were called for allotment of the shops. It is also evident that the accused issued office order constituting the Committee, dated 25.08.2003, only based on the approval of the Assistant Manager. Hence, the first approval with regard to the committee seems to be made by the Assistant Manager, Ch.Lal.

15. PW6 is the General Manager and also Support Manager in the ONGC during the relevant period. He deposed that when he was attending the Assert Review Meeting the Assets Manager requested him to look after the cases of allotment of shops immediately, as the occupants of the colony were demanding to set up the shops. PW5 was in charge of the estate section. Then he called her since she was dealing with that subject before his joining. She explained as to what she has done during the last two to three months. He came to know that a committee was formed with the approval of AED/Asset Manager, to go into the modalities regarding the fixation of rents, electricity charges and

security deposits etc. the procedure for allotment of shop is after getting the approval of Asset Manager the file is referred to Materials Manager Department for tendering. He was cross-examined by the accused.

16. PW7 is the Inspector, CBI, who received the report from PW2 and arranged the pre and post trap proceedings. He deposed that he conducted the proceedings in the presence of mediators i.e., PWs.3 and 4. Hence, the evidence of PW3 and 4 can be looked into before dealing with the evidence of PW7. The evidence of PWs.3 and 4 is that on being called by the CBI Officials, they went to the office of CBI, where phenolphthalein test was demonstrated in the pre trap proceedings and the currency notes were verified by them and currency note numbers were needed down. He corroborated the evidence of PW2 with regard to PW2 going to the flat of the accused and again they going to the park and later entering the flat, receiving the pre arranged signal from PW2, PW2 Pointing the accused. The accused was questioned as to whether he received the bribe but he denied having received any bribe. The complaint was shown to him and after going through the contents he kept silent. The Phenolphthalein test was conducted and it turned positive. On the spot, the explanation given by the accused was that he received Rs.5,000/- from PW2. After recovery of the amount, the CBI Officer did not question the accused anything further. It was suggested to him that the accused stated to Sri P.M.Naidu that PW1 repaid the amount of Rs.5,000/- to him,

which was taken as a loan and that it was not mentioned in Ex.P3.

17 According to the evidence of PW4, who is another mediator, the accused admitted that he received Rs.5,000/-, but he did not admit that he received the said amount as a bribe. PW7 also corroborated the evidence of PWs.3 and 4 with regard to the seizure of the amount from the accused. Same suggestion as given to him with regard to the receipt of amount of Rs.5,000/- by the accused, was given to him. PW8 is the Director (HR), ONGC, Corporate office, who obtained the sanction to prosecute the accused. PW9 is the Assistant Superintendent of police, CBI, Visakhapatnam, who received the CD file from PW7.

18. It is the evidence of PW9, which throws any amount of doubt on the entire case of the prosecution. He is the witness who conducted part of the investigation. During the course of investigation, he examined PWs.1 to 6 and filed charge sheet after obtaining sanction order. In the cross-examination, he states that as per the statement of PW2 recorded by him under Section 161 (3) CRPC before 03.11.2003 PW1 should pay bribe amount of Rs.5,000/-. The witness again added that subsequent to 03.11.2003, the accused again demanded that PW2 should pay the said bribe amount. He further admits that he examined and recorded the statement of the accused and that during that examination he stated before him that PW2 repaid the loan amount due to him. He again added that when

he further questioned the accused to produce either the promissory note or any receipt evidencing the alleged lending of money to PW2, he could not produce any such documentary evidence. He further admitted that the accused did not state before him that he lent the amount by obtaining a promissory note or any receipt from PW2. With regard to the antecedents of the accused he did not examine any witnesses. He did not receive any material or any record from PW7, showing that the accused is in the habit of demanding bribe amounts and receiving the same either from the contractors or from anybody else. He did not examine any officials working in the office of the accused, after he examined this accused to know whether there was any practice of giving hand loans by the accused and other officers, to the subordinate staff.

19. This statement of the accused, which is stated to be recorded by PW9, is not placed on record. By virtue of the fact that the accused stated before him that PW2 repaid the loan amount, the case of the accused becomes probabllised and it also lends strength to the suggestion given on behalf of the accused, that his explanation given on the spot, which is to the same effect, was not recorded in the post-trap proceedings. The argument of the Public Prosecutor that, *in fact,* no statement was recorded by PW9, cannot be appreciated and accepted in the light of the assertion made by PW9 before the court in his evidence. He did not simply state that he examined, but he also states that he recorded his statement. Even if that can be considered as an erroneous typing by the court, he volunteered

to say that he questioned the accused further to produce the promissory note or any receipt. Hence, the said fact would support the fact of the accused informing him that the amount was given to him towards discharge of a loan taken by PW2.

20. The counsel for the appellant relies on this part of the evidence, along with the admissions made by PW2 in his cross-examination, to contend that there is a practice of giving and taking money in their office. The counsel submits that when such practice is established and when the accused took the said plea immediately on the spot, the accused stands probablishing his defence. The counsel also seeks the court to appreciate these facts in the light of the evidence of PWs.5 and 6, that the accused do not have any role to play in the allotment of the shops. He also seeks the court to place reliance on the evidence of DW1, who is the wife of the accused. She supports the case of the accused that the accused informed her that PW2 came to their house to repay the loan amount. Her evidence can be unhesitatingly categorised as interested evidence.

21. But, however, the facts, which play in favour of the accused, are that the evidence of Pws.1 and 2 is shaky with regard to the demand of the amount by the accused. The evidence of Pws.5 and 6 is clear that the accused does not have any role to play in the allotment of shops and is also clear that the applications, which were received in the office, were not acted upon and were not considered and fresh tenders were also called for for allotment of shops. The accused gave an

explanation to PW9 that the amount was received by him towards the discharge of loan taken by PW2. When the prosecution witnesses themselves speak about a particular procedure, which is being followed in their office for allotment of shops, it is for the prosecution to show that such procedure left some scope for the officers to exercise some discretion and that the accused had a scope to prevail over the said officers, to see that they exercise that discretion in favour of PW2. But except stating that the procedure is of calling tenders, the prosecution did not go any further to prove the procedure involved in accepting the tenders. In such circumstances, the only inference that can be drawn is that the lowest tender would be accepted by the department.

22. The file relating to allotment of provisions store in the colony of ONGC Employees, which was marked as Ex.P6 on behalf of the prosecution, was relied upon by the appellant's counsel to show that the appellant did not have any role to play in the allotment of shops. In the office order, dated 30.07.2003, the name of the appellant is shown as a Manager (P&A) under the remarks. It is stated that in addition to Estate he will be continuing the job of organising the events.

23. The counsel for the appellant, in support of his contention that when the prosecution fails to show that the accused is responsible for the allotment of shops, the prosecution has to fail, relies on a judgment of the Supreme Court reported in

*State of T.N. v. S.Krishna Murthy*[1], wherein it was observed that granting of patta certificate was not the sole responsibility of the respondent and it was a cumulative act of various officials of the Taluk Office, therefore, the High Court also came to a conclusion that a demand for an individual bribe in the facts and circumstances of the case cannot be accepted.

24. In the case on hand also, it is clear that the allotment of the shops is a cumulative act of various officials in which the accused did not have any role and the prosecution failed to prove that the bribe taken by the accused was for the purpose of influencing or getting the official favour done by the persons concerned in the allotment of the shops.

25. In the light of the above appreciation of the evidence, this court holds that the prosecution miserably failed to prove the demand of bribe by the accused and thereby, the appellant is entitled for a benefit of doubt.

Accordingly, points 1 and 2 are answered.

<u>POINT No.3</u>: -

26. In view of the conclusions arrived by this court under point Nos.1 and 2, this court opines that the judgment of the court below cannot be sustained and the same is accordingly set aside.

<u>POINT No.4</u>: -

27. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant in

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1 2002(9) SCC 530

judgment, dated 19.12.2006, passed in C.C.No.11 of 2004, by the court of Special Judge for CBI Cases, Visakhapatnam. Consequently, the appellant is acquitted of the charge leveled against him. The appellant shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant shall be refunded to him.

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

T. RAJANI, J

November 15, 2018
LMV