THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.1124 OF 2006

JUDGMENT:

This appeal is filed under Section 378(3) and (1) of Cr.P.C. by the State represented by Inspector of Police, Anti-Corruption Bureau, Anantapur Range, Anantapur, assailing the judgment dated 13.10.2005 in C.C.No.9 of 1994 on the file of the Additional Special Judge for SPE and ACB Cases, Hyderabad, wherein and whereby the respondent-Accused Officer was found not guilty for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and consequently, he was acquitted of the said offences.

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

On 26.09.1993 P.W.1 P.Mohammed Haneef submitted a complaint–Ex.P1 to the Deputy Superintendent of Police, Anti Corruption Bureau, Anantapur Range, who in turn registered a case in Crime No.5/ACB-ATP/93 under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and issued the First Information Report–Ex.P14. During the course of investigation, it is revealed that PW.1 submitted an application to the District Collector, Anantapur for assignment of land to an extent of Ac.3.00 cents in Sy.No.79 of Thummalapalli village, in his favour. P.W.1 has been in possession and enjoyment of the said land since very long time. On 08.09.1993 and 24.09.1993 P.W.1 approached the Accused Officer, who is working as

Mandal Revenue Inspector, Amadagur Mandal, Anantapur District, for clearance of the file for which the Accused Officer demanded an amount of Rs.2,000/- as bribe and ultimately reduced the same to Rs.1500/-. P.W.1, who is not willing to pay the bribe amount, approached the ACB officials. On 27.09.1993, P.W.11 conducted pre-trap proceedings in the presence of P.W.2 and P.W.4. P.W.11 explained the importance of chemical test and conducted sodium carbonate test in the presence of PWs.2, 4 and other mediators. He applied sodium carbonate powder to currency notes–M.O.5 and handed over the same to P.W.1 to pay the same to Accused Officer on further demand. Ex.P5 is the pre-trap proceedings. On 27.09.1993 P.W.4 along with ACB officials proceeded to Kadiri on a zeep from Kalasamudram Forest Guest House. P.W.1 had taken the Accused Officer to Annapurna Hotel, Kadiri. On demand, P.W.1 handed over M.O.5–tainted currency notes to Accused Officer, who in turn counted the same. On receiving the signal given by PW.1, the ACB officials entered into the hotel and mixed sodium carbonate powder in two tumblers and asked the Accused Officer to rinse his right and left hand fingers in it. The Accused Officer rinsed his right and left hand fingers in it and his fingers are turned into pink colour. PW.11 prepared the post-trap proceedings (mediators report)–Ex.P.7 and rough sketch of scene of offence–Ex.P.6, and seized Exs.P8, P9, P10 and P11 from the Rexene bag–M.O.10 of the Accused Officer. After completion of the test, P.W.11 seized the material objects–MOs.3 to 11 at the scene of offence. PW.12 examined and recorded the statements of the witnesses. After completion of necessary formalities, PW.11 received sanction order–Ex.P.13 from the Government to prosecute the Accused Officer. After completion of the investigation, he laid charge sheet against the Accused Officer before the Additional Special Judge for SPE and ACB Cases, Hyderabad, who in turn had taken the case on file under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and numbered the charge sheet as C.C.No.9 of 1994 and issued summons to the accused. On appearance of the accused, the learned Special Judge supplied copies of all documents to him as contemplated under Section 207 Cr.P.C. On hearing both parties, the Special Judge framed charges under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act against the accused, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the accused, on behalf of the prosecution, PWs.1 to 12 were examined and Exs.P.1 to P.15 and M.Os.1 to 11 were marked. After completion of the prosecution side evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence deposed against him by the prosecution witnesses, which he denied. On behalf of the defence, DWs.1 to 4 were examined.

5. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the Accused Officer for the offences punishable under Sections 7

and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and consequently, acquitted him of the said offences. Feeling aggrieved by the judgment dated 13.10.2005 of the trial Court; the State preferred the present appeal.

6. Sri Udaya Bhaskara Rao, the learned Special Public Prosecutor for A.C.B., attacked the judgment of the trial Court on the following grounds:

1. The trial Court has not considered the oral testimony of P.Ws.1, 2, 4 and Exs.P5 and P7, M.Os.1 to 11 in right perspective?
2. The finding of the trial Court that nobody will take bribe amount in the presence of others is not sustainable?
3. The trial Court placed much reliance on the spot explanation of the accused by discarding the substantive piece of evidence available on record?
4. The findings recorded by the trial Court are perverse and liable to be set aside?
5. No credibility can be attached to the spot explanation of the Accused Officer in view of the testimony of P.W.1; therefore it is a fit case to allow the appeal.

7. *Per contra,* Sri D.Jaya Surya, Advocate, representing Sri Venkateswara Rao Dittakavi, learned counsel for the respondent-Accused Officer, strenuously submitted that the prosecution miserably failed to prove that the official favour was pending before the Accused Officer as on the date of trap, i.e. 27.09.1993. He further submitted that the trial Court rightly considered the spot explanation submitted by the Accused Officer. He further submitted that the prosecution seized Ex.P11–file from the Mandal Revenue Office, with an ulterior motive to implicate the Accused Officer in this case. He further

submitted that all the official witnesses have not supported the prosecution version and that aspect was considered by the trial Court in right perspective. He further submitted that the findings recorded by the Court below are based on evidence much less legally admissible evidence; therefore, it is not a fit case to interfere.

8. Now the points that arise for consideration in this appeal are:

1. Whether the prosecution has proved the guilt of the Accused Officer for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act beyond all reasonable doubt? and
2. Whether the judgment of the trial Court is sustainable either on facts or in law?

9. Point Nos.1 and 2 are intertwined with each other in one way or other, hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

10. Before adverting to the findings of the trial Court, 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**

[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

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;

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.

11. Let me consider the facts of the case on hand in the light of the principles enunciated in the cases cited supra.

12. As seen from the testimony of P.W.1, on 27.09.1993 he submitted Ex.P1 complaint to P.W.11 DSP, ACB, Anantapur range. The testimony of P.W.11 reveals that basing on Ex.P1–Complaint; he registered a case in Crime No. 5/ACB-ATP/1993 and issued FIR–Ex.P14. In the cross-examination of these two witnesses, nothing is elicited to shake their testimony so far as lodging of complaint and registration of case is concerned. The material placed before the Court clinchingly establishes that P.W.1 set the criminal law into motion.

13. At the time of the trap, the Accused Officer is working as a Mandal Revenue Inspector. The Accused Officer is also not disputing his designation as on the date of trap. The material placed before the Court clinchingly establishes that the Accused

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[6] (2015) 3 SCC 247
[7] (2015) 11 SCC 314

Officer is a public servant as contemplated under Section 2(c) of the Prevention of Corruption Act.

14. The next question that falls for consideration is whether M.O.5–tainted money was recovered from the possession of the Accused Officer.

15. As seen from the testimony of P.Ws.2 and 3, P.W.11 conducted sodium carbonate test in their presence at Kalasamudram Forest Guest House. Their testimony further reveals that one of the police constables applied phenolphthalein powder to the currency notes–M.O.5 supplied by P.W.1. Their testimony further reveals that after completion of the test, P.W.11 sealed the samples–M.Os.1 and 2. P.W.11 also deposed on the same lines to that of P.W.2 and P.W.4 with regard to the manner of conducting of pre-trap proceedings–Ex.P7. In the cross-examination of these witnesses, nothing is elicited to shake their testimony with regard to the above aspects.

16. As seen from the testimony of P.Ws.1, 2 and 4, they went to Kadiri along with the ACB officials. Their testimony further reveals that the zeep was stopped at the outskirts of Kadiri and P.Ws.1 and 4 went to MRO office and found Accused Officer was not in the office. Thereafter, P.W.2 and 4 proceeded to Lalitha Electronics shop and found Accused Officer there. As per the testimony of P.W.4, Accused Officer and P.W.1 went to Annapurna Hotel. As per the testimony of P.W.4, himself and one constable by name Yesaiah went to Annapurna Hotel in

order to watch the proceedings. As per the testimony of P.W.1, he handed over the tainted currency notes–M.O.5 to the Accused Officer, who in turn received and counted the same. As per the testimony of P.W.4, P.W.1 handed over M.O.5 to the accused on demand. The testimony of P.W.11 reveals that on receiving the signals, he entered into the hotel and conducted post trap proceedings in the presence of P.Ws.2 and 4. The testimony of P.Ws.2 and 4 reveals that as per the directions of P.W.11 the accused rinsed his left and right hand fingers in the sodium carbonate mixed water in two tumblers. As per the testimony of P.W.11–Inspector of Police, ACB, Anantapur, the Accused Officer rinsed his left and right hand fingers in the tumblers. The fingers of the Accused Officer turned into pink. Their testimony further reveals that P.W.11 seized M.O.5 prepared rough sketch Ex.P6 and post trap proceedings Ex.P7. Their testimony further reveals that P.W.11 seized Exs.P8, P9, P10 and P11 from the rexene bag of the Accused Officer. In the cross-examination of these witnesses, nothing is elicited to shake their testimony so far as conducting of post trap proceedings are concerned. The material available on record reveals that the chemical test conducted by P.W.11 yielded positive result.

17. The next question that falls for consideration is whether any official favour is pending before the Accused Officer as on the date of trap.

18. As seen from the testimony of P.W.1 he submitted an application to the District Collector, Anantapur in the year 1992

for assignment of agricultural land to an extent of Acs.3.00 in Sy.No.79 and Ac.1.00 in Sy.No.215 of Tummalapalli village. As per the testimony of P.Ws.2 and 4, P.W.11 seized Ex.P8, P9 and P10–Files from the possession of Accused Officer on 27.09.1993 in Annapurna Hotel, Kadiri. Ex.P9 is the land assignment file of Pujari Venkatamma. Ex.P10 is the land assignment file of K.Venkataramana. There is no whisper in the testimony of P.Ws.1 and 2 that Ex.P11 file was seized by P.W.11 on 27.09.1993 in their presence. At one stage, P.W.4 stated that P.W.11 seized the assignment file of P.W.1. Ex.P11 file was not shown to P.Ws.1, 2 and 4 at the time of their examination. Ex.P11 was marked through P.W.11–DSP. The learned Special Public Prosecutor for ACB strenuously submitted that no suggestion was put to P.Ws.2 and 4 that Ex.P11 was not seized from the possession of the Accused Officer.

19. When a witness states something in his chief examination, then the defence, in the cross-examination, has to put suggestions negating such facts. When the witness has not stated anything in his chief examination, the question of denial does not arise. When there is no whisper in the testimony of P.Ws.2 and 4 that P.W.11 seized Ex.P11–File in their presence, there is no need to put any suggestion, in the cross-examination, on that aspect. The question of denial arises if there is an admission. Merely because the defence counsel has not put any suggestion to P.Ws.2 and 4, that Ex.P11 was not seized in their presence that itself would not amount to admission of the prosecution version.

20. As rightly pointed out by the learned Special Public Prosecutor, P.W.11 denied a suggestion that Ex.P11–File was seized from MRO Office, Amadagur Mandal, Anantapur District. P.W.3 who is the then MRO denied the suggestion that he handed over Ex.P11–file to P.W.11. P.W.6 worked as Senior Assistant in Mandal Revenue Office, Amadagur at the relevant point of time. As seen from the testimony of P.W.6, he received Ex.P11-File from the Accused Officer; thereafter, he prepared check slip and sent the same to the MRO Office. P.W.8 worked as MRO, Amadagur from June 1991 to 31.08.1992. As per the testimony of P.W.8, the Accused Officer conducted tom tom in Thummalapalli village calling for objections if any for assignment of land in favour of P.W.1. His testimony further reveals that after completion of necessary formalities, the Accused Officer submitted the record in the office. If the testimony of P.W.6 and 8 are taken into consideration, the Accused Officer processed the file in the year 1993 itself. The testimony of P.W.6 and 8 is corroborating with each other with regard to processing of the file of P.W.1 by the Accused Officer. In the cross-examination, P.W.3 categorically stated that Ex.P11 file bears the signatures of Accused Officer and P.W.6. P.Ws.3, 6 and 8 are competent persons to speak about the movement of file from one seat to other seat in MRO Office. After completion of formalities, the Accused Officer forwarded the file to the Senior Assistant. After completion of necessary formalities, the Senior Assistant–P.W.6 will forward the file to the Mandal Revenue Officer. P.W.3 denied the suggestion that he received

File–Ex.P11 on 15.08.1993. The prosecution miserably failed to establish from whom P.W.11 seized Ex.P11–file.

21. It is not in dispute that the Accused Officer was relieved from the office of MRO, Amadagur on 05.08.1993. As seen from the testimony of P.W.5, he is the successor of the Accused Officer. The testimony of P.W.5 clearly reveals that he had taken the charge on 07.08.1993. The case of the prosecution is that the Accused Officer has not handed over Ex.P11–file to his successor. As per the testimony of P.W.3, the Accused Officer has not handed over the charge to P.W.5 in his presence. He categorically stated that P.W.5 did not complain against the Accused Officer with regard to Ex.P11–file. The testimony of P.W.5 clearly reveals that the Accused Officer handed over all the files to him on 15.09.1993. If the testimony of P.W.5 is taken into consideration, the Accused Officer handed over all the files relating to Amadagur Mandal Revenue Office to P.W.5 on 15.09.1993. The trap was laid on 27.09.1993. In such circumstances how P.W.11 has seized Ex.P11–file from the possession of the Accused Officer is not properly explained. Basing on the material available on record, the possibility of taking of Ex.P11–file from the office of MRO, Amadagur cannot be ruled out completely. The version put forth by the prosecution that Ex.P11–file was seized from the possession of the Accused Officer is very much doubtful and far away from truth in view of the testimony of official witnesses. Viewed from any angle, the prosecution failed to prove beyond all reasonable doubt that Ex.P11–file was seized from the possession of the

Accused Officer on 27.09.1993. The material available on record clinchingly establishes that no file enabling official favour to P.W.1 is pending before the Accused Officer as on the date of the trap.

22. If the prosecution proves beyond all reasonable doubt that the Accused Officer demanded and accepted illegal gratification that itself is sufficient to convict a person under the provisions of Sections 7 or 13 of the Prevention of Corruption Act. As per the testimony of P.W.1, he visited the MRO office, Amadaguru on 08.09.1993 and the Accused Officer demanded bribe amount of Rs.2,000/- for clearing of Ex.P11–file. His testimony further reveals that on 24.09.1993 at his request, the accused agreed to accept bribe amount of Rs.1500/- instead of Rs.2,000/-. His testimony further reveals that he borrowed an amount of Rs.1500/- from P.W.9 under Ex.P2–promissory note. This Court carefully scanned the testimony of P.W.9. P.W.9 is not in a position to say, who is the scribe of Ex.P2–promissory note. At one stage he deposed that he does not know the contents of Ex.P2–promissory note. The testimony of P.W.9 does not inspire the confidence of the Court in view of ignorance pleaded by him on material aspects. In such circumstances, no credibility can be attached to the testimony of P.W.9 and Ex.P2.

23. It is an admitted fact that the Accused Officer was relieved from MRO Office, Amadagur on 05.08.1993. There is no whisper in the testimony of P.W.3 that the Accused Officer visited the MRO Office, Amadagur after 05.08.1993. The Accused Officer has no right whatsoever to sit in the MRO Office

after 05.08.1993. In such circumstances, this Court is unable to understand how the Accused Officer demanded bribe amount from P.W.1 on 08.09.1993 and 24.09.1993 in Mandal Revenue Office, Amadagur. In the cross-examination, P.W.1 introduced a new version that he does not know when Accused Officer was transferred from MRO office, Amadagur. By any stretch of imagination, it can be presumed that the Accused Officer demanded bribe amount from P.W.1 in MRO Office, Amadagur on 08.09.1993 or on 24.09.1993. The version put forth by the prosecution on this regard is very much doubtful and unbelievable. The prosecution failed to establish that the Accused Officer demanded illegal gratification from P.W.1 on 08.09.1993 and 24.09.1993.

24. As rightly pointed out by the learned Special Public Prosecutor, the Court has to consider the spot explanation submitted by the Accused Officer with reference to other attending circumstances. There is no mention in Ex.P5–Pre-trap proceedings that raid will be conducted in Mandal Revenue Office, Kadiri. Even as per the prosecution version, the Accused Officer has not joined in Mandal Revenue Office, Kadiri as on 27.09.1993. There is some ambiguity in the version put-forth by the prosecution with regard to the exact place where the trap likely to be conducted. As per the testimony of P.W.1 and 4, first they visited the Mandal Revenue Office, Kadiri, thereafter, Lalitha Electronics, Kadiri. If the testimony of P.W.1 is taken into consideration, he has taken Accused Officer to Annapurna Hotel, Kadiri. P.W.4 has given different versions with regard to

his presence at the time of the trap. At one stage, he stated that P.W.11 did not instruct him to go to Annapurna Hotel. At one stage, he deposed that in anticipation of arrival of P.W.1 and Accused Officer, they went to Annapurna Hotel and occupied seats in AC room. This Court is unable to understand how these people anticipated that certainly P.W.1 and Accused Officer will come to the AC room in the Hotel. The Accused Officer gave spot explanation that P.W.1 handed over M.O.5 to him to send the same to his wife, who is not feeling well; of course P.W.1 denied that suggestion. P.W.2 and 4 have categorically stated that P.W.1 has prior acquaintance with the Accused Officer. Their testimony further reveals that the Accused Officer and P.W.1 belong to same village. P.W.1 in unequivocal terms deposed that the family members of Accused Officer have been residing in Amadagur village even after his transfer. This itself indicates that he has acquaintance with the Accused Officer. All these aspects also create a doubt with regard to the demand of illegal gratification by the Accused Officer from P.W.1. It is a settled principle of law that the prosecution has to establish its case beyond all reasonable doubt. When two views are possible basing on the material available on record, the Court has to draw an inference which is in favour of the accused, in view of the principle laid down in **State of Maharashtra v Dhyaneshwar Laxman Rao Wankhede[8].** The material placed before the Court falls short to establish that the Accused Officer demanded illegal gratification from P.W.1 to do official favour. The trial Court considered the

[8] (2009) 15 SCC 200

oral testimony of the witnesses with reference to documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to prove the guilt of the accused for the offences punishable under Section 7 and 13(1)(d) read with 13(2) of Prevention of Corruption Act. The trial Court assigned reasons much less cogent and 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 the contention of the learned Special Public Prosecutor that the findings recorded by the Court below are perverse and liable to be set aside. There is no flaw much less legal flaw in the findings recorded by the trial Court, which warrants interference of this Court. There are no grounds much less valid grounds to interfere with the well considered judgment passed by the trial Court. The appeal lacks merits and the same is liable to be dismissed.

25. In the result, the Criminal Appeal is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 12.02.2018
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