SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.919 of 2006

%31.12.2018

K.Ramakrishna

...Appellant

VERSUS

$ The State, Rep. by Deputy Superintendent of Police.
...Respondent

< GIST:

> HEAD NOTE:

!Counsel for Appellant : Sri A.Diwakar Rao

^Counsel for Respondent: Mr.N.Ananda Rao, Standing Counsel

? Cases referred

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.919 of 2006

JUDGMENT:

This Criminal Appeal is preferred against the judgment of the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in C.C.No.42 of 2002, dated 20.06.2006, by virtue of which the learned Special Judge convicted the appellant/accused for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 (for short, 'the Act') and sentenced to undergo Rigorous Imprisonment for one year and also fine of Rs.1,500/- and in default to suffer simple imprisonment for a period of two months. The learned Judge also convicted the accused for the offence punishable under Section 13 (1) (d) read with Section 13 (2) of the Act and sentenced him to undergo Rigorous Imprisonment for a period of one year and also fine of Rs.1,500/- and in default to suffer Simple Imprisonment for a period of two months.

2. The facts of the case briefly as per the charge sheet are as follows:

The complainant was involved in a traffic accident which occurred on 24.04.1998 and did not attend the Court. A non-bailable warrant was issued. The Inspector of Police effected the arrest of the complainant through one Rama Krishna, Head Constable, on 27.03.1999 before the public holidays and the complainant had to be in custody for more than 48 hours, which, if reported to the appointing authority, would result in automatic suspension. The Inspector of Police demanded a bribe of Rs.1,500/- from the complainant for not sending a report to the superior officer about his detention at Gandhinagar Police Station and instructed him to pay the said amount to K. Rama Krishna, Head Constable, within a day or two, after obtaining bail from the Court. The Inspector of Police also informed the complainant that he would be produced in the Court on 30.03.1999 and he should make arrangements for bail. On the said date, the complainant obtained bail at 1.00 p.m. and, while he was going to his house along with his brother, the said Head Constable demanded him to pay Rs.1,500/-, as demanded by the Inspector of Police, on 31.03.1999 between 1.00 p.m and 5.00 p.m without fail. The complainant was not willing to pay the bribe amount and, hence, lodged a complaint to the Deputy Superintendent of Police, Anti Corruption Bureau, on which a case in Crime No.5/ACB-CR/99 was registered.

During investigation, pre-trap proceedings were prepared and on the date of trap i.e., on 31.03.1999 at about 4.40 p.m, the complainant went to the accused and gave the tainted amount to him and on receiving pre-arrangement signal from the complainant, the trap party trapped the accused and recovered the tainted amount from him and the sodium carbonate test also turned positive on his fingers. After due investigation, charge sheet was laid against the accused for the offences punishable under Sections 7 and 13 (2) read with 13 (1) (d) of the Act.

3. The trial Court, on appearance of the accused before it, complied with all the required legal formalities and framed the

charges for the offences punishable under Sections 7 and 3 (1) (d) of the Act against the accused, for which the accused pleaded not guilty and claimed to be tired.

4. During the course of trial, on behalf of prosecution, P.Ws.1 to 8 were examined and Exs.P1 to P10 and M.Os.1 to 8 were marked, besides Ex.X1.

5. After conclusion of the prosecution evidence, the accused was questioned about the incriminating circumstances appearing against him during his examination under Section 313 Cr.P.C. He denied the truth in the evidence of the prosecution witnesses and, on his behalf, he examined D.Ws.1 to 3 and got marked Exs.D1 to D5.

6. The lower Court, on appreciation of the evidence and the material on record, passed the impugned judgment, against which this appeal is filed on the grounds that the lower Court failed to see that the witnesses to the occurrence were inimically disposed of towards the appellant and that the case rests on circumstantial evidence; the lower Court failed to see that the circumstances relied upon by the prosecution are not proved and, even if proved, are wholly insufficient for the conviction; and the lower Court ought to have rejected the evidence of P.Ws.1 and 2 since it is highly suspicious. Based on the above grounds, the appellant sought for setting aside the judgment of the trial Court.

7. Heard the learned counsel for the appellant and the Public Prosecutor for the respondent-State.

8. Learned counsel for the appellant contends that the Inspector, who is the prime accused, is not shown as the accused in this case and that the prosecution was laid only against the appellant, who only acted on the instructions of the Inspector. He further contends that there is absolutely no official favour pending with the accused, as, on the date of the alleged demand and trap and that the demand of bribe was towards suppressing a fact, which is supposed to be intimated to the Officers of the complainant, and, hence, it cannot be considered as a fact falling within the purview of the Act.

9. The Public Prosecutor, on the other hand, contends that the official favour was very much pending as on the date of demand and that the evidence amply proves that the accused has made a demand of amount, which is not his legal remuneration.

10. Based on the above arguments and the material on record, the following points come up for consideration by this Court:

> (1) Whether any official favour was pending with the accused as on the date of alleged demand and the trap.
>
> (2) Whether the prosecution could prove the guilt of the accused beyond all reasonable doubt for the offences with which he is charged.
>
> (3) What result.

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

The evidence of PW.1, who is the complainant, is that he met with a minor accident in April, 1998 on tank bund and a case was registered against him. Thereafter, the Head Constable Rama Krishna came along with his staff to serve summons on him and took his signature on the summons, though he did not handover the summons to him. Before leaving, the accused took him aside and said that the Gandhinagar Police Station has registered a case against him and if he pays Rs.5,000/-, he will look after that case. The accused also told that the said amount has to be paid to the Inspectors and other staff also. Thereafter, on 27.03.1999 at about 2.00 A.M., the accused, along with four staff members, came to his house and demanded him to pay Rs.5,000/-. He plainly rejected to pay the said amount. Then the accused, with his constables, took him from his house to Gandhinagar Police Station and kept him in lock up room. On the next day, which was a Sunday, at about 9.00 A.M, the accused took him to the residence of a Magistrate and from there, he was brought back to the Police Station and was again kept in the lock up room. The next day was a Monday, but it was Bakrid festival, which was a holiday. He was taken to the X Metropolitan Magistrate Court on 30.03.1999. His brother was also with him at the Court. While they were returning after obtaining bail, in the Court premises, the accused demanded Rs.1,500/- from him and threatened that if he does not pay Rs.1,500/-, he would write a report to his department about the case and his detention for three days. Though he was not willing to pay bribe, he agreed to pay the same to the accused in such circumstances. Then the accused instructed him to come on 31.03.1999 and pay him the bribe between 1.00 p.m to 04.30 p.m. On the next day, he, along with his brother, met the DSP and gave a report to him. Pre-trap proceedings were prepared and during the trap, they parked the vehicle and reached the Secunderabad court premises at

3.50 p.m. The DSP instructed him and his brother to go and meet the accused and they both entered the premises through the eastern gate. They found the accused in the varandah of the Court. On seeing him, the accused immediately called him and enquired whether he brought the money and he replied to him in the affirmative. Then the accused took him out from the court premises through the eastern gate and to a tree. There the accused demanded him to pay Rs.1,500/-. He took out the amount and gave it to the right hand of the accused. The accused counted the amount with his right hand and kept it in his right side pant pocket. Then, as instructed earlier by the DSP, he gave the pre-arranged signal to the trap party, on which the trap party rushed to that place. After their arrival, he pointed the accused. The DSP stopped the accused and asked PW.1 and his brother to stay away. Two hours later, he (PW.1) and his brother were called back. DSP and the trap party asked him (PW.1) to explain as to what happened and then he explained them whatever had happened and the same was noted. 2 or 3 days later, he was examined and his statement was also recorded by the Magistrate under Section 164 Cr.P.C.

12. PW.2 is the elder brother of PW.1. He corroborated the evidence of PW.1 on all aspects. According to his evidence, after a case was registered against PW.1 in Gandhinagar Police Station, PW.1 was taken to the Hospital for treatment. Thereafter, they forgot about the accident case. Suddenly on 27.03.1999, some police officials came to the house of PW.1 at night and took him away. At

that time, he (PW.2) was not at home and his son came and informed him about PW.1 being taken away by the police. Then he enquired about the case with Kanchanbagh Police Station and he was informed that there was no such case relating to PW.1 in their Police Station. On the next day, they searched for PW.1. On 29.03.1999, his family members received a phone call from Gandhinagar Police Station that PW.1 was kept in lock up. Then on the same day, he went to Gandhinagar Police Station and there, the accused informed him that PW.1 was produced before the Magistrate at his residence. On the next day, they went to the Court and obtained bail. After obtaining bail, when he and PW.1 were returning, the accused demanded Rs.1,500/-, stating that if that amount is paid, he would see that the case is closed against PW.1 and if not, he would send the report to the department.

Hence, from the evidence of PWs.1 and 2, it can be understood that the demand was primarily made for not sending the report to the department, against PW.1.

13. PW.3 is a traffic police constable in Charminar Police Station. Earlier, he worked in Gandhinagar Police Station. According to his evidence, on 27.03.1999, he along with the accused and some others was on night duty. On that day, the accused took him and others, who were on duty, to execute non-bailable warrant against PW.1. They all reached the house of PW.1 and the accused knocked the doors of the house. A lady and a gent opened the doors. It was about 2.30 A.M. The accused introduced himself and informed that he came to execute non-bailable warrant against

PW.1. The said lady and gent informed that PW.1 was not available in the house. The accused observed that there is another room in the house with doors closed and asked them to call whoever is present in that room. The lady knocked the doors. Thereafter, PW.1 came out. The accused informed him that non-bailable warrant is pending against him and that PW.1 has to follow him to the police station. PW.1 agreed and wore his shirt and all of them came out and sat in the jeep.

14. PW.4 is the Sub-Inspector of Police in Gandhinagar Police Station during the relevant period. His evidence is that on 25.04.1998, he received intimation from Gandhi Hospital, Secunderabad, that one Lachaiah was admitted in Gandhi Hospital, and then he sent one Satyanarayana, Head Constable, to that Hospital for enquiry and to record the statement of the injured. Basing on the statement of the injured, he registered the case against PW.1. 2 or 3 days later, PW.2 came to the police station and requested him to return the scooter involved in the accident, but he refused to return the scooter, as it is involved in the offence. 10 days later, PW.2 came along with PW.1. He arrested PW.1 and released him on bail on the surety of PW.2. Thereafter, on receipt of wound certificate, he filed charge sheet.

15. From the evidence of PW.4, it can be understood that a case was registered based on the statement of the injured and PW.1 was also released on bail by him. It can be understood that the summons that were served on PW.1 were for the purpose of giving evidence in the Court, at which stage there would be no role that

can be played by the accused for closing the case. The crime was already registered by PW.4 and bail was also given by him. Hence, no official favour was lying with the accused by 27.03.1999.

16. <u>POINT Nos.2 & 3</u>:

A non-bailable warrant was issued by the Court, for execution of which the accused went to the house of PW.1. The evidence of PW.3 shows that the warrant was executed without any problem and that PW.1 also followed PW.3 without any resistance. The evidence of PWs.1 and 2 shows that PW.1 was kept in lock up for three days, as they were Court holidays, and later he was produced in the Court. After appearing in the Court, PW.1 obtained bail and while he was returning home, at that point of time, the accused demanded Rs.1,500/- from PW.1 stating that if he does not pay the amount, the matter would be informed to his department.

17. It is stated by the counsel that there is a rule that if a Government official is kept in lock up for 48 hours, he would be suspended from his service. As a responsible citizen, PW.1 himself is expected to inform to his department about the fact of his being in lock up for 48 hours. He need not be threatened by some one that the information would be passed on to the department. If he had felt the threat, it is only because of his own intention to screen the said fact from reaching the department, which is not legal. The information that the accused wanted to pass on to the department of PW.1 on his failure to pay the bribe amount is certainly not an official favour and there is absolutely no reason for PW.1 to succumb to the said demand. As already said, it is PW.1 who has to

inform the department about the said fact and he ought to have expressed the same to the accused when he made a demand of bribe, instead of approaching the ACB officials. It might be true that the accused had demanded the said amount, but such demand cannot be brought within the purview of the Act, as it is not a demand made for fulfilling any official favour.

18. For the above reasons, the evidence of defence witnesses is not taken up for consideration, as the evidence of the prosecution witnesses itself would not suffice to prove the guilt of the accused. Hence, in view of the same, this Court finds that the prosecution failed to prove the guilt of the accused for the offences with which he is charged.

19. Accordingly, the Criminal Appeal is allowed, setting aside the conviction and sentence recorded by the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, vide judgment dated 20.06.2006, in C.C.No.42 of 2002, against the appellant/accused for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 and, accordingly, he is acquitted of the charges. The fine amount, if any, paid by the appellant/accused shall be refunded to him. The appellant/accused shall be released forthwith, if he is not required in any other crime.

T. RAJANI, J

31st December, 2018.
v v
Note :-
L.R.copy to be marked