SMT JUSTICE T. RAJANI

<u>CRIMINAL APPEAL No.539 OF 2008</u>

<u>JUDGMENT</u>:

This appeal is preferred, by the appellant, who is the accused in the lower court, aggrieved by the Judgment, dated 22.04.2008, passed in C.C.No.15 of 2004, by the Court of Special Judge for CBI Cases, Hyderabad, by virtue of which the said 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 four years and to pay a fine of Rs.500/- and in default of payment of fine, simple imprisonment for a period of one months for the offence under Section 7 of the Act and four years rigorous imprisonment and fine of Rs.5600/- and in default of payment of fine, simple imprisonment for a period of one months, for the offence under Section 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, while working as Telephone Mechanic at Peddapalli Telephone Exchange, Karimnagar (Dt), by abusing his official position as public servant, demanded bribe of Rs.800/- on 31.10.2003, from the complainant, for providing new telephone connection to his son i.e., D.Satish Rao. On 04.11.2003, the accused demanded and accepted the bribe amount as a motive/reward for doing official favour in providing new telephone connection to the house of the complainant.

3. The trial court took the case on file and after complying with all the legal formalities, framed charges 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 the course of trial, PWs.1 to 9 and Exs.P1 to P17, and MOs.1 to 4 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. No oral or documentary evidence was adduced on behalf of the accused.

4. After considering the evidence and the 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 should have seen that the ingredients to constitute the said offences are not proved by any legal and reliable evidence. The trial court erred in placing reliance on the highly interested testimony of PWs.2, 3 and 6 and failed to appreciate the various categorical admissions of PWs.3 and 9. The trial court should have seen that the accused is not competent to grant any telephone connection to PW2. The trial court should have seen that Ex.P5 complaint is brought into existence after commencement of investigation of the case. The trial court should have seen that on the date of trap,

no official work or favour was pending with the accused. The trial court should have seen that the accused, after the trap, gave an immediate explanation that PW1 passed on the tainted money to the accused towards purchase of new telephone instrument which is proved by the evidence on record. The trial court failed to see that the accused can rebut the presumption by way of showing preponderance of probabilities. The trial court should have seen that sanctioning authority accorded sanction mechanically, without application of mind.

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

7. The counsel for the appellant contends that the sanction of telephone was not yet done by the date of alleged demand by the accused and that hence, it cannot be said that any official favour was pending with the accused.

8. The Public Prosecutor, on the other hand, submits that even if sanction was not done, the accused took the bribe amount promising to influence the officials concerned with the sanction. He contends that the scope of Section 7 is to include the efforts made by the accused to get the official favour done by himself or from any other concerned official.

9. Keeping the above arguments in view and considering the material on record, the following points are framed for consideration:

1) Whether the prosecution would prove the demand made by the accused and whether any official favour was pending with the accused and whether the act of the accused would fall within the ambit of Section 7 of the Act.

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

3) To what result.

POINT Nos.1 and 2: -

10. PW2, who is the complainant, deposed that his son and himself applied for getting a phone connection in their house in Peddapalli Telephone Exchange and paid required fee of Rs.500/- The JE of telephones, promised to provide a telephone. PW2 is an illiterate. The accused, who is a lineman in the BSNL, asked him to meet subsequently, for getting telephone and the accused demanded amount for getting the telephone. He stated that unless amount is paid, telephone connection will not be given. The accused demanded Rs.1,000/- and finally reduced to Rs.800/. Thereafter, one week lapsed and the accused started harassing them. Thereby, the complainant approached the police. Along with him, his son was also present when he had conversation with a lady officer at Hyderabad. The lady officer sent an officer by name Jaffar to his house at Kudurupaka. From Kudurupaka, they went to Padapally telephone exchange and lodged the complaint before the CBI Officer and attested the same, which was marked as Ex.P5. The contents were scribed by

his son and his son also signed on Ex.P5. The CBI Officer instructed him to bring the demanded amount, as such, he brought the amount. Pre trap proceedings were prepared by the CBI Officer, in the presence of mediators and then they proceeded to the telephone exchange of Pedapally. One Somasekhar accompanied him to telephone exchange of Pedapally. After reaching there he went to the accused. The accused asked him whether he brought the amount. He replied that he brought the amount and the accused took him to a hotel by name Milan which is situated opposite to telephone exchange of Pedapally. Himself, the accused and Somasekhar went to the hotel and they took tea. The accused asked the amount and the complainant requested for reducing some amount but the accused was reluctant to reduce. Immediately, he picked up the currency notes form his right shirt pocket and handed over to the accused. The accused counted the amount with his both hands and kept the same in his right shirt pocket. Somasekhar gave the prearranged signal to CBI Officials, then CBI Officials came there. The CBI officials caught hold of both the hands of the accused at wrist level. Then both the hands of the accused were got dipped into a solution separately and the liquid turned into red colour. That solution was collected in separate bottles and sealed. The accused also handed over the amount to the CBI officials and it was seized. The accused replied to the CBI Officers that he took the amount for fixing telephone. From there they went to the telephone exchange of Pedapally. From there they went to the telephone exchange of Pedapally, where the proceedings are scribed. He signed on the said proceedings and the same was marked as Ex.P3. In the cross-examination, he deposed that he did not submit any application for getting telephone. He stated that he cannot say the date when he deposited Rs.500/- but he stated that it was in the year 2003. It was suggested to him that the cable was at fault during the period when he paid Rs.500/- towards deposit. He admitted that the Sub-Divisional Telephone Officer (PW3) has to sanction for providing a telephone and he is the competent authority. He denied the suggestion that the JTO informed him that telephone will be provided after rectification of cable at Kudurupaka. He further stated that the duty of the accused is to connect the telephone wire from the pole to his house and install the instrument. The accused has to install the telephone after the competent authority sanctions it. He admitted that there is a delay in installation of cable, after filing Ex.P6.

11. PW6, who is the son of the complainant, also corroborated the evidence of PW2. PW1, who is a mediator for the trap proceedings, deposed in his evidence that on receiving the instructions from his manager, that he has to go to R & B guest housie at Karimnagar, he met the CBI Officer, where he saw the complainant. He further deposed that he has gone through the contents of the complaint lodged by the son of the complainant and the complainant. Trap proceedings were explained to him by the CBI Officials. The CBI officials asked him to accompany PW2 to the telephone exchange and to hear the conversation between PW2 and the accused. He was also instructed to give relay signal

by wiping his face with the handkerchief. The CBI officials instructed PW2 to pay the amount to the accused only if demanded. As such, they went to the office of the accused. After PW2 entered the hall where the accused was found in a chair, PW2 had a cordial talk with the accused. PW2 offered a cup of coffee to the accused. Both of them went to the opposite hotel by name Milan sweets. He too followed the accused and the complainant to the same hotel. He sat there, the accused and the complainant sat opposite to one another and he sat on a parallel table to the accused and the complainant. He could not hear the conversation between the accused and the complainant because of road disturbance. PW2 took out currency notes from his shirt pocket and handed over to the accused. The accused took it and counted it and kept in his shirt pocket. Then he came out from the hotel and gave the prearranged signal to the CBI Officials. Then CBI Officials rushed there, caught hold of both the hands of the accused at wrist level. The CBI Officials seized the currency notes and conducted sodium carbonate solution test, which turned positive. When the CBI officials enquired with the accused whether he gook the amount or not, then the accused replied that the amount was paid as Inam. The currency notes were tallied when they were verified. In the cross-examination, he admitted that the conversation between PW2 and the accused was not audible to him.

12. PW3, who is the Sub-Divisional Engineer (SDE), Telephones, Saifabad, who previously worked at Peddapally, deposed that he knows the accused who worked as telephone

mechanic at Peddapally. According to his evidence, the duties of the Sub-Divisional Engineer are maintenance of telephone exchange, fault control, maintenance of staff. The accused has to attend fault telephones and maintain outdoor network. He has to provide telephone service connections.

13. PW7, who is the Junior Telecom Officer, Rajahmundry, during the relevant period, also deposed before the court that the accused has to attend telephone complaints instructed by him. Sub-Divisional Engineer, telephones will give work order for installation of telephones. After receiving communication, he will instruct the concerned telephonic mechanic for providing telephonic connection in pursuance of work order. He spoke about the application given by PW6 for his telephone and paying Rs.500/- and the application being under waiting list.

14. Hence, from the evidence of PW3, it is clear that the accused is the person who has to provide telephone service connections. In his evidence, PW3 further stated that on 04.11.2003, the CBI officials called him at Peddapally. They prepared the proceedings and the accused was in the custody of the CBI Officers. He signed on the proceedings, which are marked as Ex.P3. Waiting list register and attendance register were handed over to the CBI Officer on his request. He further stated that on 08.05.2003, PW2 made an application for non-OYT connection. PW2 paid Rs.500/- for getting telephone on 08.05.2003. The demand note is marked as Ex.P9 and Ex.P10 is the receipt passed by the department. The waiting list register

extract is marked as Ex.P11. Ex.P13 is the allocation letter of the duties of the telephone mechanic. As per Ex.P13, accused had jurisdiction over Kudurupaka.

15. From the evidence of PW3, it is clear that the waiting list for the telephones was prepared and the name of PW2 finds place in the waiting list. The contention of the appellant's counsel is that until the waiting list is approved, no official favour would come into the hands of the accused. But it is clear that the accused is the person having jurisdiction over the village of PW2 and that he is the person who has to give telephone connections. The post trap proceedings, marked as Ex.P3, would show that on seeing the CBI officials, the accused became perplexed and was stunned and after some time he replied that the complainant has given the amount to him as an Inam. Later also, when he was questioned as to whether he demanded and accepted the bribe amount of Rs.800/- from PW2. He stated that he did not demand any money from PW2, but told him that he would try to provide a telephone connection and further on questioning him he stated that it was an Inam given to him by PW2.

16. Hence, from the version of the accused, which is incorporated in Ex.P3, it can be understood that though the official favour did not come into the hands of the accused, the fact remains that the name of PW2 figures in the waiting list and the accused made a promise to make efforts to provide a telephone connection. In the light of all these facts, the amount

given to the accused, which is termed by him as an Inam, can be nothing more than a bribe. It can be said that PW2 offering the amount on his own, without there being any demand from the accused, is improbable. Moreover, PW2 categorically stated that the accused made a demand for Rs.1,000/- initially and reduced it Rs.800/-.

17. At this juncture, it is pertinent to refer to Section 7 of the Act, which is extracted hereunder:

> "7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine."

18. Section 20 of the Act adumbrates a presumption. It would suffice for the prosecution to prove that the accused has accepted any gratification from any person in order to invoke the said presumption. From the explanation given by the accused itself, it can be understood that he received gratification other

than legal remuneration, from PW2. Hence, the burden shifts on to the accused by virtue of the operation of the presumption under Section 20 of the Act. The explanation given by the accused incorporated, in Ex.P3, itself would prove that the accused promised PW2 that he would make efforts for getting a telephone connection. Hence, a comprehensive reading of the oral and documentary evidence would clinchingly prove that the accused demanded the amount as a bribe, for getting an official favour done, if not for doing an official favour. Further, the suggestion given to PW8 in the cross-examination would also support the case of the prosecution, which is that when the accused was spontaneously questioned by him, he stated that PW2 paid the amount for purchasing in open market. Hence, any of the varied versions of the accused would only prove that the amount was accepted by him on his demand thereby, throwing a burden on him to prove that he received the amount otherwise than as a gratification, which he failed to discharge.

19. In view of the above discussion, the prosecution stands proving the demand made by the accused and the acts of the accused come within the ambit of Sections 7 and 13 (1) (d) of the Act and hence, the judgment of the court below needs no interference.

20. Accordingly, points 1 and 2 are answered.

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

21. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence, imposed against the appellant,

by Judgment, dated 22.04.2008, passed in C.C.No.15 of 2004, by the Court of Special Judge for CBI Cases, Hyderabad.

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

T. RAJANI, J

November 5, 2018
LMV