

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.654 of 2006

JUDGMENT:

Impugning the judgment of the Special Judge for SPE & ACB Cases, Vijayawada in CC.No.39 of 2000 dated 21.04.2006, this appeal is preferred by the appellant-accused. By virtue of the said judgment, the Court below convicted the accused for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

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

The complainant is resident of Penamaluru village in Krishna District. He worked as temporary peon in Satyanarayanpuram branch of the Corporation Bank on various occasions, during the period from 1989-91. Thereafter, his services were not utilized. He applied for regular post of Peon, the vacancy for which arose and he was called for interview on 13.07.1998 at Vijayawada main branch, along with other eligible candidates, for the said post. The complainant appeared for the interview before the interview committee consisting of three members, apart from the accused. The accused, on 08.12.1998, came to the house of the complainant and discussed about the chance of his getting the post and demanded Rs.60,000/- in order to help the complainant in securing the job. The complainant informed the accused that he would discuss the same with his family members and intimate the same. On 03.01.1999, the accused once again visited the residence of the complainant and met him, who in turn, took the accused to the house of his uncle and together they had discussion

about the prospects of the complainant getting the post. The accused initially demanded Rs.60,000/- but reduced it to Rs.40,000/- on that day. The complainant did not agree to pay such huge amount and hence, the accused reduced it further to Rs.20,000/- and when the complainant expressed his inability to pay, concession by way of permitting to pay Rs.10,000/- as first instalment and the remaining amount after some time, was given. The accused informed the complainant that he would visit him again on 10.01.1999 for collecting the first instalment and while going away from his house, the accused gave his visiting card to the complainant.

As the complainant was not willing to pay the bribe amount to the accused, he went to the office of DSP, ACB, Vijayawada on 09.01.1999 and presented a report. An enquiry was caused about the antecedents of both the accused and the complainant. Later, the pre-trap proceedings were conducted by the DSP, ACB, Vijayawada in the presence of mediators, on 10.01.1999. At 9.30 AM, the trap party left the office of the DSP, ACB, Vijayawada and reached the residence of the complainant and took up vantage positions. At about 10.10 AM the accused was seen entering the residence of the complainant and at about 10.20 AM, the complainant came out and gave the pre-arranged signal, indicating the demand and acceptance of bribe by the accused. On that signal, the DSP, along with trap party, rushed to the residence of the complainant and conducted trap proceedings before the mediators. The chemical test was conducted on both the hands of the accused and it proved positive. The tainted amount was

recovered from the accused, the numbers of which tallied with the numbers of the notes already recorded in the pre-trap proceedings.

A crime was registered and on appearance of the accused, the Court below framed charges for the offence under Sections 7 and 13(2) read with 13(1)(d)(i)(ii) of the Prevention of Corruption Act. After recording the plea of not guilty by the accused and on his claim for trial, the Court below conducted trial and P.Ws.1 to 8 were examined and Exs.P1 to P14 and M.Os.1 to 8 were marked on behalf of the prosecution. The accused during his 313 Cr.P.C. examination denied the truth in the evidence of the prosecution witnesses and he got marked Exs.D1 to D4 on his behalf.

3. The Court below, after considering the material and evidence on record, passed the impugned judgment convicting the accused, against which the present appeal is preferred on the grounds that the Court below erred in taking cognizance and trying the case against the appellant; it failed to see that the appellant had no power to confer any official favour on P.W.1, as he was only a member of Selection Committee, which was headed by the Regional Officer, P.W.6; it failed to see that it was P.W.6, who corresponded with the head office regarding selection through Exs.D3 and D4, which fact was not denied by the prosecution; it failed to see that there was no evidence to prove the demand, which is one of the essential ingredients of the offence; it failed to see that the alleged demands on 08.12.1998 and 03.01.1999 were nothing but concoctions; it ought to have held that the amount of Rs.10,000/- paid to the appellant by P.W.1 represented partial discharge of loan obtained by

him and it failed to see that the preponderance of probabilities, as proved by Exs.D1 and D2, which were accepted by P.W.1, as having been addressed to the appellant, would clearly prove the case of the appellant. Based on the above, the appellant seeks this Court to set aside the impugned judgment.

4. Heard the learned counsel for the appellant and the learned Public Prosecutor for the respondent.

5. The counsel for the appellant submits that there is ample evidence to prove that the amount given by the complainant is towards the discharge of the loan taken by the complainant and that Exs.D1 and D2, which were admitted by P.W.1, would amply prove the said fact. He contends that the Court below ought to have considered the said evidence and ought to have given benefit of doubt to the accused.

6. The learned Public Prosecutor, on the other hand, submits that P.W.1 was won over by the accused and he wanted to speak in favour the accused and hence, he admitted that Exs.D1 and D2, but those documents are nothing but fabricated documents, which are brought into existence subsequent to the filing of this case.

7. Keeping the above arguments in view, this Court frames the following points for consideration:

1. Whether the accused could prove his case by preponderance of probabilities.
2. Whether the prosecution could prove the guilt of the accused for the offences alleged against him

beyond all reasonable doubt and whether the judgment of the Court below is sustainable.

3. To what relief.

POINT No.1:

8. The contention of the Public Prosecutor that the complainant wanted to speak in favour of the accused and hence, he admitted Exs.D1 and D2, is not accepted, for the reason that in the chief examination he absolutely supported the case of the prosecution. The complainant very much spoke about the demand of bribe made by the accused. It was only in the cross-examination, which was done on the same day that he was confronted with Exs.D1 and D2 and he admitted the same. Speaking about the demand, he stated that he applied for regular post of peon in the Corporation Bank, Vijayawada and he was called for interview in the month of June. Four persons attended the interview along with him and the accused was one of the members of the interview board. After the interview, he was informed by the interview committee that he will be intimated in writing about the result of the selection of interview. He further stated that in the year 1998, he gave representation through their union people. On 08.12.1998, the accused visited his residence while he was with L.W.3, who is his relative and demanded Rs.60,000/- for helping him in securing the job. He told the accused that he would discuss the matter with other family members and communicate the same later. He was informed by the accused that he would come after 15 days.

On 03.01.1999, the accused again came to his house, while he was alone and demanded the bribe amount. He informed the matter to his uncle, L.W.2, who came to his house and both of them expressed

their inability to pay the bribe amount of Rs.60,000/-. Then the accused reduced the amount to Rs.40,000/- and when he pleaded his inability to pay the said amount, the accused further reduced the amount to Rs.20,000/- and when they expressed inability to pay the said amount, the accused advised him to pay Rs.10,000/- on 10.01.1999 and the remaining balance of Rs.10,000/- after getting the appointment order. The complainant unwillingly accepted the said proposal.

On 09.01.1999, he gave a report to the DSP, ACB, Vijayawada. The DSP instructed him to come along with the bribe amount of Rs.10,000/-. On 10.01.1999, he went to the office of the DSP along with the bribe amount and the pre-trap proceedings were arranged and the denomination of the currency notes were noted down and they proceeded towards the house of the complainant along with mediators and the DSP. He was declared hostile, as he stated that he does not remember any other happening prior to their proceeding to his house along with the raid party.

But, however, he went on to state that after proceeding to his house, at about 10 AM, the accused came to his house and demanded the bribe amount. He gave the bribe amount from his pocket with right hand and the accused took the amount with his right hand and kept in his left side shirt pocket and then he came out of the house and gave the pre-arranged signal to the trap party.

9. The evidence of P.W.1, though he was declared hostile, shows that he substantially supported the prosecution case. He spoke about the demand made by the accused and also giving the tainted amount

to the accused. He also spoke about the demand of the accused even at the time of receiving the tainted amount. Hence, it can be understood that no hostility was exhibited by P.W.1.

In the cross-examination done on behalf of the accused, he stated that he does not remember as to who wrote the contents of Ex.P1. Even in the cross-examination, he reiterated the demand made by the accused. But during further cross-examination, he admitted that the letter dated 02.12.1998 written by him was addressed to the accused and he admitted that he is indebted an amount of Rs.12,000/- by 02.12.1998. He admitted that Exs.D1 and D2 letters were addressed by him to the accused. It was suggested that in Ex.P1, the dates of 3rd and 10th January 1999, being Sundays, were incorporated at the instance of ACB officials in order to fix the accused in this case. He also admitted that in Ex.D2 he mentioned that he would repay the amount either on Saturday or Sunday. He also admitted that in Ex.D2 he had written that he will inform the accused over phone on which date, he would repay the amount. He further admitted that the Attender post for which interviews were held was earmarked for Scheduled Caste candidates and he mentioned in Ex.P1 that the sole post was already given to another candidate. He denied the suggestion that L.Ws.2 and 3 were planted witnesses, they being his relatives.

In the cross-examination done by the Public Prosecutor, he stated that he had sent Exs.D1 and D2 keeping them in postal envelope, to the accused. He denied the suggestion that they were not addressed by him to the accused prior to the date of trap and they

were conveniently prepared after entering into compromise with the accused in order to help him after the trap.

10. P.W.2 is the father-in-law of P.W.1. He stated that P.W.1 informed him that he was called for the interview but he was not aware whether he attended the interview. After the interview, P.W.1 did not get appointment and he moved together with the union people for some period. During January 1999, P.W.1 brought the accused on the way to his house and at that time, the accused demanded an amount of Rs.60,000/- towards bribe. He also corroborated the evidence of P.W.1 with regard to reduction of bribe amount to Rs.10,000/-. He could not say as to who drafted Ex.P1. He was declared hostile at that juncture.

In the cross-examination done by the Public Prosecutor, he denied the suggestion that he scribed the report and that he stated before the police as in Ex.P6 that he scribed the report and that the contents of Ex.P1 are in his hand writing. By virtue of the said suggestion, the case of the prosecution becomes inconsistent, as according to P.W.1, Ex.P1 was drafted by him but according to P.W.2, it was drafted by P.W.2.

11. P.W.3 is clerk in Andhra Bank, Penumaluru Branch and is the cousin brother of P.W.1. He also spoke about P.W.1 attending interview and about the demand made by the accused.

12. P.W.4 is one of the mediators. He spoke about the pre-trap proceedings. He stated that after proceeding to the house of the complainant, they took vantage positions and ten minutes thereafter,

they observed one person going into the house of P.W.1 and ten minutes thereafter, P.W.1 came out of his house and gave the pre-arranged signal and on that, the trap party rushed into the house of P.W.1 and they found the accused sitting on a cot in the house of P.W.1. The DSP instructed P.W.1 to wait outside. The DSP introduced him to the accused and other party members to the accused. On the instructions of the DSP, one of the Constables prepared Sodium Carbonate solution and the accused rinsed his right hand fingers in the solution, which turned into pink colour. Later, the DSP enquired the accused whether he received any bribe amount from P.W.1, then the accused produced the bribe amount of Rs.10,000/- from out of his pocket and the serial numbers on the currency notes were verified and found tallying with the numbers noted by them in the pre-trap proceedings. It was suggested to him that the explanation given by the accused was not properly incorporated in the charge proceedings recorded by them.

13. P.W.5 is the retired Zonal Manager in the Corporation Bank. He stated that he was one of the members of the Interview Board along with the accused. He prepared the correspondence between their office and the Head office. The selection committee members were aware as to who had the best chances for selection. At this stage, he was declared hostile.

In the cross-examination, he stated that he does not remember whether the accused prepared the correspondence between their office and the Head office, with regard to the selection of P.W.1 and that he

was deposing falsely in order to help the accused that he prepared the correspondence.

In the cross-examination done by the accused, he stated that Ex.D30 is the copy of the letter dated 16.11.1998 addressed to the Head Office, stating that one A. Srinivasa Rao, S.C. candidate was selected and in spite of reminders, he did not produce the caste certificate and appointment of P. Srinivasa Rao was recommended. He also admitted that he addressed Ex.D4 letter, suggesting to the Head Office that P.W.1 cannot be selected for the post. It was suggested by the Public Prosecutor that Exs.D3 and D4 were not prepared at that time and they were prepared subsequently, to help the accused.

14. P.W.6 is the witness, who accorded sanction for prosecuting the case. P.W.7 is the DSP, ACB during the relevant period, who conducted the trap proceedings. To him also, it was suggested that the version given by the accused that Rs.10,000/- was received by him as partial discharge of debt was not incorporated in Ex.P9 post-trap proceedings. P.W.8 is the Inspector of Police, ACB, Vijayawada, who filed the charge sheet. He was instructed to enquire about the antecedents of P.W.1 and the accused. In the cross-examination, he stated that by 4.30 PM, he could not complete the discreet enquiry with regard to the antecedents of the said people.

15. The counsel for the appellant contends that the accused under Section 313 C.P.C examination also reiterated the fact that Rs.10,000/- was paid to him as part of the loan amount.

16. Exs.D1 and D2 can be looked into, they being letters addressed by the complainant to the accused. Ex.D1 is dated 02.12.1998, which show that the accused has been pressing the complainant time and again for the amount of Rs.12,000/- taken during August 1998. He expressed that the way in which the accused talked to the wife of the complainant with regard to money is not proper. The complainant assured to give the amount due within the ensuing Sankranthi and he also expressed that if for any reason he cannot give the entire amount, he will provide up to Rs.10,000/-. The complainant asked the accused not to pressurise him time and again for money. He also expressed that if the accused helped him in respect of job, using his good offices, the complainant's family would remain indebted to him.

17. The contents of Ex.D1 seem to be very natural. If, as argued by the Public Prosecutor, it was prepared subsequent to the trap proceedings, in order to help the accused, the complainant would not at all have mentioned about the job, as that would be thought as a fact suggesting the guilt of the accused. It also shows that the complainant was in a position to discharge the amount of Rs.12,000/-, which was admittedly taken from the accused and he promised to pay Rs.10,000/-.

18. In Ex.D2, the complainant states that in spite of informing the accused several times, he had been pressurising for the amount of Rs.12,000/-. The said letter is dated 06.01.1999. He stated that the attitude of the accused is not at all good and that the accused knows about his properties. He expressed that he will pay off the debt by selling a buffalo and that it is not a big matter for him and that since

the circumstances are not favouring him, he stated that he could not arrange the money to the accused. He further expressed that being aware of the facts, the accused had been tarnishing him and that it was not good on his part and that in spite of being aware of the facts, he had been spoiling his image. He also mentioned that he would give away his money on the coming Saturday or Sunday and that he would inform the same on telephone as to when he should come and take money.

19. Ex.D3 is the letter addressed by the Regional Manager, recommending the issue of appointment letter to one P. Srinivasa Rao, who was found suitable by the Interview Committee. This letter is dated 16.11.1998. Ex.D4, which is addressed by the Regional Manager, dated 04.12.1998 shows that already it was informed to the Chief Manager, Mangalore about the non-suitability of the complainant, as he was found to be dull and does not have general awareness. It was also informed that the complainant does not have contacts with the branch since 1991. It was expressed that if still the Chief Manager feels that seniority is the only criteria, irrespective of merit, he may inform them for doing the needful.

20. Exs.D1 to D4 throw any amount of doubt on the veracity of P.W.1 and with regard to pendency of any official favour in the hands of the accused. Ex.D3 shows that already one P. Srinivasa Rao was recommended to be appointed in the said post, which is sought by the complainant and Ex.D4 shows that a letter was addressed wherein non-suitability of the complainant to the said post, was intimated. Exs.D1 and D2 would render any amount of support to the defence

taken by the accused that the amount is given to the accused towards partial discharge of the debt of the complainant. Exs.D1 and D2 were not found to be fabricated. Hence, there is absolute support coming from the said documents, to the defence taken by the accused. It is also possible that P.W.1 would develop grouse against the accused for the pressure that was mounted by him for the discharge of the said loan.

21. The counsel for the appellant relies on a decision of this Court in T.S. LAXMAN RAO v. STATE OF ANDHRA PRADESH¹ wherein it was held that the explanation given by the accused will not be rendered invalid merely because it was not taken at the earliest point of time during trap proceedings or at the time of framing charges by the trial Court. However, in this case, it can be seen that a suggestion was given to the mediators and the DSP that the explanation given by the accused was not incorporated in Ex.P9. Hence, this Court opines that the accused has proved his defence by preponderance of probabilities.

The point is accordingly answered in favour of the appellant-accused.

POINT No.2:

In view of the conclusion under point No.1, this Court opines that the judgment of the Court below is not sustainable.

The point is answered accordingly.

¹ 2012 (2) ALD (CRL.) 185 (AP)

POINT No.3:

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accuse vide judgment of the Special Judge for SPE & ACB Cases, Vijayawada in CC.No.39 of 2000 dated 21.04.2006, are set aside. The appellant-accused shall be set at liberty forthwith, if not required in any other case. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 11th, 2018
DSK

T. RAJANI, J

