* SMT JUSTICE T. RAJANI

+ CRIMINAL APPEAL Nos.598 and 1451 OF 2006

% Dated: 31.12.2018

V.Gopalakrishna Murthy

... PETITIONERS

AND

$ State of Andhra Pradesh, Rep. by Inspector of Police, ACB.

... RESPONDENT

! Counsel for Petitioners : MR. M. RAVINDER

^ Counsel for Respondent : PUBLIC PROSECUTOR

< GIST :

> HEAD NOTE:

? Cases referred:

1. 2003(0) SCJ Online (SC) 584

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

* * *

CRIMINAL APPEAL Nos.598 and 1451 OF 2006

Between:

V.Gopalakrishna Murthy

...Petitioner

and

The State of Andhra Pradesh, rep. by its Public Prosecutor and another

.... Respondents

Date of Judgment pronounced on : 31.12.2018

SMT JUSTICE T. RAJANI

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

T. RAJANI, J

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL Nos.598 and 1451 OF 2006

COMMON JUDGMENT:

These appeals are preferred, by the appellants, who are the accused and the complainant respectively, before the lower court, aggrieved by the Judgment, dated 15.04.2006, passed in C.C.No.7 of 2001, by the Court of Special Judge for SPE & ACB Cases, Nellore, by virtue of which the trial court convicted accused No. 1, for the offence under Section 13(2) r/w 13(1)(c) & (d) of The Protection of Corruption Act, 1988 (for short, "the Act") and sentenced them to undergo Simple Imprisonment for a period for one year, besides payment of fine of Rs.500/- and in default, to suffer simple imprisonment for one month. Case against accused No. 2 was abated due to his death. Accused no. 3 and 4 having been found not guilty, were acquitted.

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

A1 is the Administrative Officer in the office of DM & HO, Nellore, from 04.11.1995 to 12.09.1998 and he was in charge of the stores and was personally responsible for the shortage/excess and misappropriation of the stocks. A2 is a Senior Assistant in the same office from 17.40.1993 to 03.11.1998 and he had to maintain the stores, files, receive the stocks of indents placed, maintenance of stock registers and preparation of requirements and purchase orders. A3, the Pharmacist, was on deputation to work in the stores of DM & HO Office from 08.08.1997 to 20.10.1998. A4 is a Radiographer worked in the stores of DM & HO Office from 08.08.1997 to 20.10.1998 and all four of them are responsible for the stocks in the stores of DM & HO.

On 12.01.1998, one lakh Cotrimaxasole tablets were received by DM & HO Nellore from M/s.Mega Health Care, Hyderabad, vide Invoice No.365, dated 31.12.1997. Its total cost was Rs.53,845/-. On 23.01.1998 four lakh tablets of Cotrimaxazole were received by the Stores of DM & HO Nellore from M/s.Mega Health Care, Hyderabad vide invoice No.374, dated 15.01.1998 and its total cost was Rs.2,15,380/-. The above tablets were issued to Primary Health Centers and Hospitals in Nellore District under issue vouchers. A1 to A4, with a dishonest intention to misappropriate the tablets, colluded together and manipulated the office copies of issue vouchers, by showing excess numbers and entered the same in the stock registers, thereby causing a huge loss to the stores and as such committed criminal misconduct and misappropriation. On 10.10.1998, the Inspector, ACB, conducted surprise check over the stores and found the variations and submitted a report to the DG, ACB, Hyderabad. Regular enquiry was conducted and a case in Crime No.14/RCO-NLR/99 was registered.

During investigation, the statements of witnesses were examined and permission was obtained for prosecuting accused Nos.2 to 4; no sanction was sought for to prosecute A1 as he already retired from service. After concluding the investigation, charges were framed against the accused for the offences under Sections 13(2) r/w 13(1)(c) & (d) and under Section 477(A) of

IPC. The same were read over and explained to them, for which they pleaded not guilty and claimed to be tried. During trial, on behalf of the prosecution, PWs.1 to 43 were examined, Exs.P1 to P100 marked. Ex.D1 was marked in the 161 CrPC statement of PW21 during his cross-examination. The accused were questioned about the incriminating circumstances appearing against them in the evidence of prosecution witnesses, when they were examined under Section 313 Cr.P.C. The accused denied the truth of the evidence of the prosecution witnesses. No oral or documentary evidence was adduced on their behalf.

3. After considering the evidence and material on record, the lower court passed the impugned judgment, convicting the accused, as aforementioned.

4. Aggrieved by the said judgment, appeal viz., Crl.A.No.598 of 2006 was preferred on the grounds that the court below erred in convicting the appellant and failed to appreciate the evidence properly. It should have seen from the evidence that the appellant has exercised the required care and caution and he is burdened with the duties of supervising multifarious functions of number of staff members. The court below failed to appreciate that it was A2, who was entrusted with the duties of exercising all supervisory powers over the stores. The court below found that the appellant failed to check the office copy of the voucher available in the office, with the original voucher available with various Hospitals, even if the duplicate vouchers cannot be produced by A2, is erroneous; it ought to have seen that there

was no scope for entertaining such a suspicion, in view of the fact that the stocks have tallied with the entries in the stock register.

5. Crl.A.No.1451 of 2006 was filed by the complainant aggrieved by the acquittal of accused Nos.3 and 4, on the grounds that the court below failed to appreciate the evidence on record against A3 and A4 with regard to their complicity, having held that A1 guilty for the offences charged against them. The court below erred in not holding that A3 and A4 are guilty for their involvement in manipulating the vouchers. The court below ought to have seen that A3 and A4 did not let in evidence to show that there was a practice of preparing vouchers only at the instance of A2 since A2 was not alive as on the date of Trial. The court below ought to have seen that A3 and A4 neither denied the collections nor putting inflated figures, which shows that they are aware and conscious of the falsity of figures. Hence, the court below was not right in giving finding in favour of the A3 and A4.

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

7. The counsel for the appellant contends that in spite of the fact that it was accused No.2, who was incharge of the stores, the court below convicted the appellant for the offences under Sections 13(2) r/w 13(1)(c) & (d) though the said sections are not attracted to the accused.

8. The Public Prosecutor, on the other hand, contends that according to Ex.P77, the appellant is personally responsible for any shortage and misappropriation of stocks and hence, when the shortage of stocks is proved, the appellant would be liable for conviction for the alleged offences.

9. Keeping the above arguments in view, the following points are framed for consideration:

> 1) Whether the acts of the accused would attract the offences alleged under Sections 13(2) r/w 13(1)(c) & (d).
>
> 2) Whether the judgment of the court below can be sustained.
>
> 3) To what result.

POINT Nos.1 and 2: -

10. The charges framed against the accused are two. The first charge is for committing criminal misconduct and misappropriation punishable under Sections 13(2) r/w 13(1)(c) & (d) and the second charge is for committing an offence punishable under Section 477A of IPC.

11. For quick reference, the above provisions are extracted hereunder:

> Sec.13:- Criminal misconduct by a public servant: -
>
> (1)...
>
> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or –
>
> (d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

..."

12. In order to bring home the guilt of the accused for the above charges, the prosecution should succeed in proving that the accused has dishonestly misappropriated or otherwise converted for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so. It also should prove, that the accused, with an intention to defraud, destroyed or altered, mutilated or falsified any book, electronic record, paper, writing, valuable security or account, which belongs to or is in the possession of his employer or has been received by him for or on behalf of his employer. It should in the alternative prove that the accused wilfully and with intent to defraud, has made or abetted the making of a false entry in the above resorted documents.

13. PWs.3 to 7, 9 to 14, 16 to 21, 23 to 27, 29 are Pharmacists in Primary Health Centres at various places, who received the medicines after entering the same in their stock registers. The other witnesses are PW28, the Medical Officer, whose predecessor received medicines from DM & HO Office. He could not state anything about the issue of stock.

PW30 is the staff nurse in PHC, Mypadu, who spoke about the receiving of the stock. Except the investigating officers, all other witnesses were examined, to testify about the receiving of the stock of medicines and about the variations found in the vouchers. All of them invariably stated that it was accused No.2, who was incharge of the stores and who is responsible for issuing of vouchers. Regarding A3 and A4, all the witnesses stated that they have acted under the instructions of A2. Considering the said fact, the lower court acquitted A3 and A4 and since A2 died during the pendency of the case, case against him abated. A1, who is the Administrative Officer, was convicted for both the charges. Absolutely there is no evidence to speak about the role of A1 in maintaining the stock register. The prosecution mainly relies on Ex.P77, which is a circular issued by the Director of Health, stating that instances have come to the notice of the Director of Health, that the Administrative Officers are not supervising the receipts and distribution of stocks in the DM & HO Office. A direction was given to the District Medical and Health Officers, to maintain issue vouchers in duplicate, duly marking a copy of it to the CPs of Directorate and suitable instructions were requested to be issued to the administrative officers in the maintenance of stock registers and attestation of receipts/vouchers on the date of transaction. It was mentioned that he should note that the accused who is incharge of stores is personally responsible for any shortage/excess/misappropriation of stocks. This circular was issued to all the District Medical and Health Officers in the State.

14. The defence of A1 has been that he was not aware of those circulars. In the ordinary course this circular might have been in all probability issued to the accused also. The appellant relies on Ex.P76, which is the proceedings issued by the District Medical and Health Officer, Nellore, which is dated 07.09.199 and which is subsequent to Ex.P77. In the said circular, duties were assigned to the respective persons and maintenance of stores files, tools and plants, maintenance of the records concerned and receipt of stocks of indents placed as per the LRs and giving to the stores concerned, miscellaneous purchases and maintenance of stock registers, preparation of requirements and purchase orders in consultation with the pharmacy supervisor and officer in charge of the stores, were entrusted to the Senior Assistant A.Kotesh, who is A2 in this case. It was mentioned in the said proceedings that the administrative officer is requested to take necessary action in monitoring all the sections and if necessary to maintain PR UTR and other important registers and is requested to identify pending work in each sections and issue suitable instructions. The appellant, who admitted that he has knowledge about Ex.P76 circular, denied knowledge about Ex.P77. His explanation gains strength from the fact that Ex.P76 was issued subsequent to Ex.P77, and in Ex.P76, the DM & HO does not mention the fact contained in Ex.P77, that is, that the accused would be personally responsible for shortage, excess and misappropriation of stocks.

15. The evidence, as already observed, also that does not spell that there is any conspiracy between the appellant and accused No.2 or any other accused, in the misappropriation caused by misreading of the stocks in the vouchers. Hence, Sections 13(1)(d) and 477A IPC does not get attracted to the accused. Even if as per Section 13(1)(c), the accused might have allowed A2 to dishonestly or fraudulently misappropriate the amount, the initial ingredient, ie. dishonesty and fraud are not made out against the appellant. No meeting of minds between A2 and the appellant was brought forth by the evidence of the prosecution. At best, it can be said that the appellant was negligent in supervising the affairs of the stores. It has come in the evidence of PW35, that the Administrative Officer cannot make physical verification of stocks every day, due to his multifarious duties. He categorically deposed that it is the duty of the stores clerk to preserve the duplicate copies of issue vouchers received from the concerned PHCs. It is the duty of the stores clerk to prepare issue vouchers as per the indent and deliver stock and to make entry in the stock register as per the office copy of the issue voucher. PW38 is none other than the retired Administrative Officer in the DM & HO office. The appellant worked as Administrative Officer prior to him. It is PW35, who is the Senior assistant in the DM & HO Office, Nellore, who spoke about A1 and states that in spite of an endorsement being made by A2 after verification of the stock that balance is nil, A1 is supposed to verify the stock physically. There can be no dispute that the appellant has a duty to verify the stock physically, in order to

see that there is no variation of stock and misappropriation consequently. But the work pressure of the administrative officer is evident. Hence, in such circumstances, no criminality can be attached to the inability of the appellant in verifying the stock physically.

16. It is in the evidence of PW35 himself, that the need to verify the stock arises only when the Administrative Officer entertains a doubt. But here, in this case, there is no possibility of entertaining any doubt, as figures in the vouchers were manipulated balancing the stocks in the vouchers and the stock in the registers in DM & HO office. It is only on physical verification that one would be able to trace out that there was some mismatch in the figures in the stock registers and the vouchers.

17. The counsel for the appellant relies on a judgment of the apex court reported in *L.Chandraiah v. State of Andhra Pradesh*[1], wherein it was held that if there is no evidence to show that the appellants had knowledge that the vouchers were fabricated by A3, it cannot be said that they acted with a criminal intent. It held "It may be, and as rightly observed by the courts below, that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409, IPC though it may expose the appellants to disciplinary action under the relevant rules." Same

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1 2003(0) SCJ Online (SC) 584

is the case with the appellant in this case. He might have derelicted his duty of examining the stocks physically. But sufficient and cogent explanation for such dereliction comes from the evidence of PW. 35, a prosecution witness himself.

18. Hence, in view of the above, this court opines that the conviction recorded by the lower court against the appellant, cannot be sustained.

POINT No.3: -

19. In the result, the Criminal Appeal No.598 of 2006 is allowed setting aside the conviction and sentence recorded against the appellant vide judgment, dated 15.04.2006, passed in C.C.No.7 of 2001, by the Court of Special Judge for SPE & ACB Cases, Nellore. Consequently, the appellant is acquitted of the charges 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.

Insofar as Criminal Appeal No.1451 of 2006 is concerned, is dismissed, confirming the judgment, dated 15.04.2006, passed in C.C.No.7 of 2001, by the Court of Special Judge for SPE & ACB Cases, Nellore.

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

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T. RAJANI, J

December 31, 2018
LMV