

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.1637 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, Vijayawada Range, assailing the judgment dated 23.12.2005 in C.C.No.37 of 2000 on the file of the Special Judge for SPE and ACB Cases, Vijayawada, wherein and whereby respondent No.1-accused officer No.1 was found not guilty for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and accused No.2 was found not guilty for the offences punishable under Sections 12 and 15 of the Prevention of Corruption Act and were consequently, acquitted of the said offences.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: On 16.08.1999 K.Veeranjaneyulu-PW.1 submitted a complaint Ex.P.1 to the Inspector of Police, A.C.B., Guntur-P.W.7. PW.7 forwarded the complaint to the Dy.S.P., A.C.B., Vijayawada-PW.9. Basing on original complaint Ex.P.1, PW.9 registered a case in Crime No.27/ACB-VJA/99 against accused officer Nos.1 and 2 for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and investigated into the matter. During the course of investigation, it is revealed that accused officer No.1 demanded an amount of Rs.500/- from PW.1

three months prior to 16.08.1999. On 14.08.1999, accused officer No.1 demanded bribe amount of Rs.500/- from PW.1 otherwise he will initiate proceedings against him. On 17.08.1999 at about 3.00 PM on the instructions of PW.9, PWs.6 and 8 were present in the A.C.B. Office, Vijayawada. PW.9 introduced PW.1 to PWs.6 and 8 and vice versa. PWs.6 and 8 verified Ex.P.1 complaint and put their initials on it (Ex.P.8). PW.9 conducted sodium carbonate test in the presence of PWs.6 and 8 and explained the importance of the chemical test. One of the constables applied philanthropic powder to the currency notes supplied by PW.1. The said constable kept money in the packet of PW.1 and directed him to handover the amount to accused officer No.1 on further demand. The Inspector of Police prepared the pre-trap proceedings Ex.P.9. PWs.6 and 8 along the trap officials went to Tea Stall of PW.1. Thereafter, the trap officials along with mediators, PW.1 and accused officer No.2 went to the house of accused officer No.1. As directed by PW.9, PW.1 went inside the house of accused officer No.1 after taking the vantage position by the trap officials. As per the instructions of PW.9, PW.1 came out from the house and gave signal. The trap officials entered into the house of accused officer No.1. In the presence of PWs.6 and 8, PW.9 seized tainted money-M.O.1 from the possession of accused officer No.2. PW.9 mixed sodium carbonate in tumbler and directed accused officer Nos.1 and 2 to rinse their hands in it. As directed by PW.9, accused officer No.1 rinsed his fingers in the tumbler, but there is no change in the colour and accused officer No.2 rinsed his fingers in the tumbler and his fingers turned into pink colour. PW.9 prepared post trap proceedings Ex.P.12 and seized M.O.3 cash,

M.Os.4, 5 and 6 sealed bottles and M.O.7. shirt of accused officer No.2. Thereafter the raid party went to the Municipal Office and prepared mediators report Ex.P.14 and seized M.O.9. After completion of post trap proceedings, accused officer Nos.1 and 2 were arrested. After receiving the sanction orders Ex.P.5 and P.6, the Inspector of Police laid charge sheet against accused officer Nos.1 and 2 for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. The learned Special Judge for SPE and ACB Cases, Vijayawada, has taken the case on file under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act against accused officer Nos.1 and 2 and numbered the charge sheet as C.C.No.37 of 2000.

4. On appearance of accused officer Nos.1 and 2, copies of all documents were furnished to them as contemplated under Section 207 Cr.P.C. After hearing both parties, the trial Court framed charges under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act against accused officer No.1 and under Sections 12 and 15 of the Prevention of Corruption Act against accused officer No.2, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

5. During the course of trial, on behalf of the prosecution, PWs.1 to 10 were examined and Exs.P.1 to P.17, Ex.X.1 and M.Os.1 to 9 were marked. After completion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating evidence deposed against them by the prosecution witnesses, which they denied. No oral or documentary evidence was adduced on behalf of the defence.

6. 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 accused officer No.1 for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and accused officer No.2 for the offences punishable under Sections 12 and 15 of the Prevention of Corruption Act and consequently, acquitted them for the said offences. Hence, the present appeal is preferred by the State.

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

1. The trial Court, having drawn the presumption under Section 20 of the Prevention of Corruption Act, ought to have convicted and sentenced accused officer Nos.1 and 2;
2. The trial Court failed to consider the recitals of Ex.P.1 complaint and Ex.P.2 Section 164 Cr.P.C. statement of PW.1 in right perspective,
3. The prosecution proved that accused officer No.1 demanded and accepted illegal gratification from PW.1 and accused officer No.2 assisted accused officer No.1 in accepting the illegal gratification; and
4. The findings recorded by the trial Court are based on assumptions and presumptions; therefore it is a fit case to allow the appeal.

8. *Per contra*, Sri Hariprasad Reddy, learned counsel, representing Sri C.Sharan Reddy, learned counsel for the respondents-accused officer Nos.1 and 2, submitted that the findings of the trial Court that the prosecution failed to prove that accused officer No.1 demanded and accepted the illegal gratification is supported by oral and documentary evidence and the prosecution also failed to establish that accused officer No.2

abetted accused officer No.1 in demanding and accepting illegal gratification. He further submitted that the findings recorded by the trial Court are based on evidence much less legally admissible evidence; therefore, it is not a fit case to allow the appeal.

9. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the prosecution has proved the guilt of accused officer No.1 for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and accused officer No.2 for the offences punishable under Sections 12 and 15 of the Prevention of Corruption Act beyond all reasonable doubt? and
2. Whether the findings recorded by the trial Court are sustainable either on facts or in law?

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

11. Before advertng to the facts of the case on hand, 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 Karnataka**⁶ and **C.Sukumaran v. State of Kerala**⁷. The following principles can be deduced from the above decisions:

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

⁶ (2015) 3 SCC 247

⁷ (2015) 11 SCC 314

- 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; and
12. Let me consider the facts of the case on hand in the light of the above legal principles.
13. It is the case of the prosecution that on 16.08.1999 PW.1 lodged a complaint Ex.P.1 to PW.7. The testimony of PW.7 reveals that PW.1 lodged Ex.P.1 complaint and the same was forwarded to PW.9. The testimony of PW.9 reveals that basing on Ex.P.1 complaint, he registered a case in Crime No.27/ACB-VJA/99 and issued F.I.R. Ex.P.16. The material placed before the court clinchingly establishes that PW.1 set the criminal law in motion.
14. The next question that falls for consideration is whether accused officer Nos.1 and 2 are public servants as on the date of trap. At the relevant point of time, accused officer No.1 was working as Sanitary Inspector and accused officer No.2 was working as Sanitary Mastry in Municipal Corporation, Narasaraopet. As per the testimony of PWs.2 and 3, at the relevant point of time, accused officer Nos.1 and 2 were working in Municipal Corporation, Narasaraopet. Accused officer Nos.1 and 2 are not disputing their designations at the relevant point of time.

The trial Court rightly considered the material available on record and arrived at a conclusion that accused officer Nos.1 and 2 are public servants. The material placed before the Court clinchingly establishes that accused officer Nos.1 and 2 are public servants as postulated under Section 2(c) of the Prevention of Corruption Act.

15. As seen from the testimony of PW.4, in the year 1999, he worked as Assistant Secretary, Municipal Administration and Urban Development, State of Andhra Pradesh, Hyderabad. His testimony further reveals that he received all the documents from D.G., A.C.B. The Principal Secretary to Government of A.P. after perusing the documents supplied by A.C.B. Officials issued sanction orders Exs.P.5 and P.6 by G.O.Ms.Nos.493 and 494 respectively. In the cross-examination also, PW.4 categorically deposed that the Principal Secretary has applied his mind to the facts of the case thereafter issued the sanction orders to prosecute accused officer Nos.1 and 2. In the cross-examination of PW.4, nothing is elicited to shake his testimony so far as issuance of sanction orders Exs.P.5 and P.6 are concerned. Having regard to the facts and circumstances of the case, I am of the considered view that the concerned official, after considering the material on record issued the sanction orders Exs.P.5 and P.6 to prosecute accused officer Nos.1 and 2 under the provisions of the Prevention of Corruption Act. Exs.P.5 and P.6 sanction orders were issued by following the due procedure.

16. As seen from the testimony of PWs.6 and 8, they visited the A.C.B. Office on 17.08.1999 at about 3:00 PM. Their testimony clearly reveals that PW.9 conducted sodium carbonate test in their

presence and explained the importance of the same. Their testimony reveals that PW.1 supplied M.O.3 currency notes. Their testimony further reveals that one of the constables applied philanthropic powder to the currency notes and handed over the same to PW.1. Their testimony further reveals that the Inspector of Police seized sealed covers M.Os.1 and 2 and prepared mediators report Ex.P.9. PW.9 also deposed on same lines with that of PWs.6 and 8. In the cross-examination of these witnesses, nothing is elicited to shake their testimony with regard to conducting of pre-trap proceedings. As seen from the testimony of PWs.6 and 8, they along with the raid party proceeded to the shop of PW.1, which is situated at Narasaraopet, from Vijayawada on a zeep. Their testimony further reveals that they have seen accused officer No.2 at the tea stall of PW.1. As per the directions of PW.9, PWs.6 and 8 along with the trap party proceeded to the house of accused officer No.1. Their testimony further reveals that after taking the vantage position by raid party, PW.1 along with accused officer No.2 went inside the house of accused officer No.1. After sometime, PW.1 came out and gave a signal. Their testimony further reveals that PW.9 conducted sodium carbonate test in their presence. The sodium carbonate test conducted on accused officer No.1 proved negative. The sodium carbonate test conducted on accused officer No.2 yielded positive result. Their testimony further reveals that the investigating officer PW.9 prepared mediators report Ex.P.12 and seized M.O.3 cash, M.Os.4, 5, 6 and 8 sealed bottles and M.O.7 shirt of accused officer No.2. PW.9 also deposed on same lines. The testimony of PWs.6, 8 and 9 corroborating with each other with regard to conducting of post

trap proceedings. Their testimony further reveals that they went to Municipal Office and seized M.O.9 under cover of panchanama Ex.P.14. The trial Court also believed the version put forth by the prosecution so far as pre and post trap proceedings are concerned. The testimony of PWs.2, 3, 5 and PW.10 are no way helpful to the prosecution to establish that accused officer No.1 demanded and accepted illegal gratification. Their testimony is also no way helpful to establish that accused officer No.2 assisted to accused officer No.1 in demanding and accepting illegal gratification.

17. PW.1 is the competent person to say whether accused officer No.1 has demanded and accepted illegal gratification from him or not. The prosecution version is that accused officer No.1 demanded an amount of Rs.500/- from PW.1 in order to do official favour. As seen from the testimony of PWs.2, 3 and 10, no file of PW.1 was pending before accused officer No.1 in the month of August, 1999 or three months prior to it. The prosecution has not placed any document to establish that PW.1 approached accused officer No.1 for official favour. Admittedly, PW.1 has not made any application before the Municipal Corporation, Narasaraopet, seeking licence or to exempt him from paying the municipal tax. The material placed before the Court falls short to establish that as on the date of raid i.e., 17.08.1999, any application was pending before the Accused Officer No.1 with regard to tea stall or juice stall of PW.1. The trial Court considered the material available on record in right perspective and arrived at a conclusion that no official favour was pending before accused officer No.1 as on the date of trap.

18. As per the testimony of PW.6, PW.1 approached accused officer No.1 for payment of licence fee and he directed him to pay the same in the Municipal Office. His testimony further reveals that PW.1 made an attempt to pay the amount to accused officer No.2, who in turn refused. Thereafter, PW.1 kept money in the pocket of accused officer No.2. In the meanwhile, raid party entered into the house of accused officer No.1 and seized M.O.3 from the possession of accused officer No.2. If the testimony of PW.6 is taken into consideration, the investigating officer PW.9 did not mention the spot explanations of accused officer Nos.1 and 2 in Ex.P.12 post trap proceedings. In the cross-examination also, PW.6 in unequivocal terms stated the above version. The testimony of PW.6 is no way helpful to the prosecution to establish that accused officer No.1 demanded and accepted illegal gratification from PW.1. Even if the testimony of PW.8, who is the other mediator, is taken into consideration, he was not present at the time of alleged payment of money by PW.1 to accused officer No.2. His testimony is no way helpful to the prosecution to establish that accused officer No.1 demanded and accepted illegal gratification from PW.1. PW.1 is the competent person to say whether accused officer No.1 has demanded and accepted illegal gratification from him or not. He is also a competent person to say whether he handed over M.O.3 money to accused officer No.2 as directed by accused officer No.1. In the cross-examination, PW.1 categorically deposed that at the direction of PW.9, he prepared Ex.P.1 complaint. His testimony further reveals that the A.C.B. Officials tutored him before recording of his statement by the learned Magistrate under Section 164 Cr.P.C. He denied the

suggestion that he stated to PW.9 as in Ex.P.3 Section 161 Cr.P.C. statement. If the testimony of PW.1 is taken into consideration, he has not voluntarily submitted Ex.P.1 complaint. Likewise, he has not given statement before the learned Magistrate voluntarily. For one reason or other, PW.1 did not support the case of prosecution. The learned Additional Public Prosecutor with the prior permission of the trial Court cross-examined this witness at length and nothing is elicited in support of the prosecution version. PW.1 turned hostile. The testimony of PW.1 is not trustworthy for consideration. The testimony of PWs.1, 6 and 8 is no way helpful to the prosecution to establish that accused officer Nos.1 and 2 demanded and accepted illegal gratification from PW.1. The evidence by eliciting certain admissions in the cross examination of the prosecution witnesses could succeed in rebutting the presumption drawn under Section 20 of the Prevention of Corruption Act. It is needless to say that the prosecution has to establish the guilt of accused officer Nos.1 and 2 beyond all reasonable doubt. Taking into consideration the facts and circumstances of the case, I have no hesitation to hold that the prosecution failed to prove the guilt of accused officer No.1 for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) and accused officer No.2 under Sections 12 and 15 of the Prevention of Corruption Act.

19. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to prove the guilt of accused officer No.1 for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) and accused officer No.2 for the offences punishable

under Sections 12 and 15 of the Prevention of Corruption Act. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. There is no flaw much less legal flaw in the findings recorded by the trial Court, which warrants interference of this Court. I am fully endorsing the findings recorded by the trial Court. There are no grounds much less valid grounds to interfere with the well considered judgment passed by the trial Court.

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

Date: 19.02.2018
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T. SUNIL CHOWDARY, J

