

SMT. JUSTICE T. RAJANI

Criminal Appeal No.269 of 2007

JUDGMENT:

This appeal is preferred against the judgment dated 15.02.2007 of the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad passed in C.C. No.15 of 2003 convicting the appellant/accused of the offences punishable under Sections 7 & 13(1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act") and consequently, sentencing him to undergo rigorous imprisonment for one year for the charge under Section 7 of the Act and also to pay a fine of Rs.300/- and in default to pay fine amount, to undergo simple imprisonment for one month, and further sentencing to undergo rigorous imprisonment for one year for the charge under Section 13(1)(d) of the Act punishable under Section 13(2) of the Act and also to pay a fine of Rs.300/- and in default to pay fine amount, to undergo simple imprisonment for one month.

The facts of the case, in brief, as per the charge sheet, are that the complainant constructed a new house at Musthafanagar, Khammam town and applied for electricity connection to his house at III-Town Electricity Office on 22.01.2001 by enclosing three D.Ds. for Rs.25/-, Rs.100/- and Rs.1,000/- towards the fee. One Sri M.Eshwaraiah, AAE., of III-Town Electricity Office instructed the accused to fix the meter in the newly constructed house of the complainant but the accused did not fix the meter. The complainant approached and requested the accused to fix the meter but the accused demanded Rs.500/- as bribe. In spite of repeated requests of the complainant, the accused did not fix the meter, and threatened the complainant, stating that he would fix the meter only after payment of Rs.500/- and otherwise, he would not fix it. On that the complainant approached the Inspector of Police, ACB, Khammam and lodged a complaint, based on which, a case was registered in Crime

No.8/ACB-WKH/2001 against the accused under Section 7 of the Act. During the course of investigation, DSP, ACB, Warangal Range, secured two mediators and laid a trap on 28.02.2001 at 09.45 hours at the house of complainant and after observing all the formalities, phenolphthalein test was conducted on both hands fingers of the accused, which yielded positive result and tainted amount of Rs.300/- was recovered from the accused from the front right side pant pocket of the accused. The samples of the above two tests and the tainted amounts were seized under second mediator report. The relevant records were seized from the office of the AEE (Operations), N.P. Division, Khammam under third mediators' report. The accused was arrested on 28.02.2001 and released on bail.

After concluding the investigation, charge sheet was laid against the accused for the offence under Section 7 and 13(1)(d) r/w.13(2) of the Act. The learned trial Court took the case on file and complied with all the required legal formalities and examined the accused under Section 239 Cr.P.C., with regard to the charges framed against him. The accused denied the charges and claimed for trial. The Court below conducted the trial of the case and examined PWs.1 to 10 and marked Exs.P1 to P18 and MOs.1 to 10, on behalf of the prosecution. 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 evidence and did not choose to adduce any evidence on his behalf.

The Court below, on appreciating the evidence on record, passed the impugned judgment against which, present appeal has been preferred by the accused on the following and other grounds that were urged at the time of hearing :-

The Court below failed to see that the *de facto* complainant is a self condemned and self contradictory witness whose evidence cannot be relied upon to base a conviction in a criminal case; it erred in placing reliance upon PW-1, who was the sole eye-witness to the incident; there is no corroboration to the evidence of PW.1, who stands on the footing of an accomplice; it also failed to see that the amount recovered from the accused is only Rs.300/- though the alleged trap amount was Rs.500/-; there is no plausible explanation for the return of Rs.200/- to PW.1 as such the defence of the accused that the amount of Rs.300/- was towards wiring charges is probablised; it failed to consider the case in its entirety to know the truthfulness or otherwise of the facts of the case. Based on the above grounds, the learned counsel for the appellant/accused seeks to set aside the impugned judgment.

Heard the learned counsel for the appellant and the learned Public Prosecutor and perused the material placed on record.

The learned counsel for the appellant/accused submits that even according to the evidence of the prosecution witnesses, the service wire has to be purchased by the consumer and the same has to be inserted in the meter for fixing the same and hence, it would prove the defence of the accused.

The learned Public Prosecutor, on the other hand, submits that by the date of the alleged demand, the service wire was already fixed inside the meter and hence, the demand has to be treated as made towards official favour of fixing the meter. Based on the above arguments, this Court framed the following point for consideration.

Whether the prosecution could prove that the accused demanded amount from the complainant for the official favour pending with him and whether the prosecution could prove the guilt of the accused for the offence with which he was charged beyond all reasonable doubt.

POINT:

The evidence of P.W.1, who is the complainant, is that after constructing a house at Mustafanagar, Khammam town, he applied for release of domestic electric service connection by way of an application dated 22.01.2001 to the AEE, enclosing demand drafts for Rs.25/-, Rs.100/- and Rs.1,000/- towards the fee, along with the application. On 23.02.2001 at about 11 am., he went to the office of the AEE concerned, situated near Elandu cross roads and met the AEE Eeshwaraiah and informed about his application and the AEE called the accused and instructed him to fix the electricity meter in his house and L.W.4 was also present at that time. He also instructed the accused in the similar manner. After said instructions, the accused went to his seat, which is in another room. P.W.1 requested the accused to fix the meter in his house, on which accused demanded Rs.500/- as bribe. P.W.1 informed him, that since he constructed his house his financial position was stringent. Thereafter, he left the office of the accused. Again on 26.02.2001, between 4:30 and 5 pm., he went to the said AEE office and met the accused and asked him to fix the electric meter in his house. The accused reiterated his earlier demand and asked him to keep the said amount ready by 28.02.2001 and also told him that he would come to his house between 9 and 10 am. Since the financial position of P.W.1 was not good, he approached the ACB officials and met the Inspector ACB and lodged a complaint, which is marked as Ex.P3. The Inspector informed him that he would call him later. He explained the mistake, that instead of lineman he mentioned him as Junior Lineman. He further stated that on 26.02.2001, in the evening, the inspector called him and asked him to come on the next day during evening hours and as such, he went there on the next day evening. As the Inspector asked him to come on the next day at 6.30 am., with the bribe amount, he went to the office of the Inspector on 28.02.2001 at 6:30 am. The DSP called two mediators, P.W.1 produced the bribe

amount and DSP instructed the mediators to note down the serial number of the said currency notes. Subsequently, a constable applied a white powder to the said notes and kept in the left side of the shirt pocket of the P.W.1, after ensuring that it was empty. He instructed him to go and pay the tainted amount to the accused at his house only on the further demand of the accused and not otherwise. The DSP and trap members waited in his bed room by taking vantage positions. DSP instructed him to relay the signal after giving the amount. He proceeded to the house of P.W.1 and got down from the Jeep and sent the Jeep away. The DSP and one constable took two mediators to vantage positions in the bed room of his house. He was sitting in the front room, waiting for the arrival of the accused. At 9:45 am., the accused came to his house, parked his vehicle in front of his house. On seeing him, accused asked him whether he was ready with the amount and when he asked about the meter, as he did not bring the meter, the accused informed him that he kept the meter in a Kerosene shop and he has to attend some repair of snapped electricity wire and after attending the repair he will come and fix the meter. Since the accused asked him to pay bribe amount, he offered the said bribe amount. The accused took the said amount, counted and returned Rs.200/- to him saying that he is gentleman and that Rs.300/- is sufficient to him. He asked the accused to sit and have tea. Accordingly, he sat and was offered tea. After the accused had tea, he went to his bed room and relayed the pre arranged signal to the trap party. On receiving the same, the DSP asked him to wait out side the house. After one hour, DSP called him and his version was recorded in the presence of the accused.

In the cross examination, P.W.1 stated that he was aware by 23.02.2001 that the Electricity Department does not provide service wire to be kept from the pole to the meter box. He admitted that on 23.02.2001 at 11 am., he did not go to the office of the Assistant

Engineer and meet L.W.3 and L.W.3 did not call the accused and instructed him to fix the electricity meter. He also stated that one M.Khaja Moinuddin, P.W.9, executed internal wiring in his house in order to fix the electric meter service as it is a pre requisite. When the accused came to his house to fix the electricity meter on 25.02.2001 the service wire was not available with him and it was not connected from the electricity pole to the meter box. At that time the accused informed him to bring the service wire so as to fix the meter and he requested the accused to get the said service wire. He did not pay any amount to the accused for purchase of the wire on his behalf. He asked the accused to bring the service wire after three days and also asked him to take money from him after three days. It was further elicited that on the date of trap, soon after the accused came to his house, he asked P.W.1 to give money to bring the service wire, so as to enable him to fix the meter. After he handed over Rs.500/-, he stated that Rs.300/- is sufficient. Saying so, he returned Rs.200/- to him. He stated that on 28.02.2001, the accused did not demand any bribe. For the reason that he resiled from his earlier version, he was declared hostile by the prosecution. During the cross examination done by the Public Prosecutor, he stated that as on the date of Ex.P1 the internal wiring in his house was completed.

The learned counsel for the appellant, when the Court pointed out that the cross examination of the P.W.1 cannot be considered as it was done at a later point of time of his chief examination, contends that even if the cross examination of P.W.1 is ignored, the facts stated in the chief examination do not also prove any case against the appellant. According to him, it is only a misconception of P.W.1 that led to the filing of the case. In order to draw support to the said contention, he seeks the Court to look into the evidence of P.W.2, who is no other than the wife of the P.W.1. But it can be seen that the evidence of P.W.2 was given on the date on which P.W.1 was cross examined i.e. 05.01.2007.

Hence, her evidence also does not carry any weight. The learned counsel for the appellant submits that ignoring the evidence of P.W.2 also, the case stands not proved. He seeks the Court to appreciate the evidence of P.W.3, who is Additional Assistant Engineer, Operation Distribution, Khammam, during the relevant point of time, who in the cross examination, stated that the consumer has to make arrangements for fixing of the service wire from the electricity pole to the meter box, at his cost and the contractor who executes internal wiring is concerned with the fixing of the said wire. He further states that nature of the job of lineman is field work and generally lineman will not be available in the office during the evening hours. He admits that on 24.02.2001 he gave instructions to the accused to fix the meter to the house of P.W.1. He also states about the general practice in their department, which is that the consumers request the linemen to purchase electricity service wire on their behalf. He further states that unless the service wire is arranged from the electricity pole to the meter box, there would be no possibility to fix the electricity meter.

P.Ws.4 and 5, who are also linemen, turned hostile. P.W.6, who is Sub Engineer, Operation Station Town-III, during the relevant point of period, stated that Ex.P1 application was received from the P.W.1 along with the necessary demand drafts. P.W.7 is the AE WRS Khammam during relevant period acted as a mediator for the trap proceedings. He corroborated the evidence of P.W.1 regarding the seizure of Rs.300/- from the accused. It was suggested to him that during the post trap proceedings the accused gave spontaneous explanation that he received Rs.300/- from the P.W.1 for purchase of electricity service wire for the house of P.W.1 and the said version was deliberately not got incorporated in Ex.P.11, post trap proceedings. P.W.8 is the DSP, ACB Warangal, during the relevant period, who received information over phone from Sri Raghava Reddy, Khammam, that he received Ex.P.3, complaint, from

the P.W.1 against the accused and he himself verified the antecedents of the accused and the genuineness of the complaint and made endorsement on Ex.P.3 that the accused was not enjoying good reputation. He spoke about the report received from P.W.1 and pre and post trap proceedings. He also denied the suggestion that the accused gave spontaneous explanation that he received Rs.300/- from P.W.1 for purchase of service wire at the request of P.W.1. P.W.9, who is the private electrician, stated that P.W.1 approached him on 25.12.2000 to undertake electricity wiring in his newly constructed house at Khammam and he got completed the said work through his electrician and issued Ex.P2, commencement and test report. Based on Ex.P2 the Public Prosecutor contends that by the date of the alleged demand, there was no work pending and there was no need of any service wire to be inserted in the meter. But in the cross examination of P.W.9, he categorically stated that as on the date of Ex.P2 no service wire was installed from the electricity pole to the meter box of the house of the P.W.1 and he is not concerned with the installation of the said service wire. P.W.10 is the Inspector, ACB, Khammam, during the relevant period, who conducted part of investigation and got recorded the statement of P.W.1 under Section 154 Cr.P.C. and submitted official report after obtaining sanction orders against the accused.

Very substratum of the prosecution case gets collapsed by virtue of the fact elicited in the cross examination of the P.Ws.4 and 9. The law is settled that as on the date of the alleged demand there should be some official favour pending with the accused and demand should be proved to have been made towards fulfillment of the said official favour. The evidence of P.W.3 is that service wire has to be purchased by the consumer himself and that there is a practice of the consumers asking the lineman to purchase the service wire. By virtue of the said fact, the defence of the accused gets probalised and by virtue of the facts

stated by the P.W.9 that by the date of Ex.P2, no service wire was installed from the electricity pole to the meter box of the P.W.1, the defence of the accused gets strong support. The improbability of the case also lies in another fact that is the accused returning Rs.200/- to P.W.1 being impressed by P.W.1. The conduct of P.W.1 in turning hostile and taking a different version in his cross examination, would also throw a doubt on his credibility.

It would not suffice for the prosecution to simply prove that the accused accepted the amount given by PW1, but it has to prove that the amount was given as a reward for an official act to be done by the accused.

Section 20(3) of the Act reads as follows:

“[20](#). Presumption where public servant accepts gratification other than legal remuneration:

[\(3\)](#) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.”

The contention of the learned counsel for the accused is that the amount given to him is towards the purchase of service wire becomes cogent by virtue of the evidence of P.Ws.3 and 9 and a serious doubt is thrown on the eclines to case. Considering the triviality of the amount and the doubts existing in the prosecution case, this Court draw the presumption, adumbrated in Section 20 of the Act.

The ruling relied upon by the counsel, reported in **B.JAYARAJ Vs. STATE OF AP**¹, is also on the aspect of proof of demand of bribe, wherein it was held that there was no demand of bribe in the said case. That is also a case where the complainant did not support the prosecution case and he disowned making the complaint and stated in

1. 2014 AIR SCW 2080

his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. The Supreme Court reiterated the settled position of law that demand of illegal gratification is *sin qua non* and mere recovery of currency notes cannot constitute the offence under Section 7 of the Act, unless it is proved beyond all reasonable doubt, that the accused voluntarily accepted the money, knowing it to be a bribe. It was also held that mere possession and recovery of currency notes from the accused, without proof of demand will not bring home the offence under Section 7 of the Act. It was further observed that, in any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act, that such gratification was received for doing or forbearing to do any official act.

The second ruling relied upon by the counsel for the appellant in **P.SATYANARAYANA MURTHY Vs. THE DISTRICT INSPECTOR OF POLICE²** is also on the same aspect, wherein it was held that when two pleas are possible, benefit of doubt must be given to the accused.

In view of the above, this Court opines that the prosecution has failed to prove the guilt of the accused for the alleged offence beyond all reasonable doubt and therefore, the impugned judgment cannot be sustained.

In the result, the criminal appeal is allowed and the conviction and sentence recorded against the appellant/accused, as narrated hereinabove, are hereby set aside and consequently, the appellant/accused is acquitted of the charges leveled against him. The appellant/accused shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any paid by the appellant/accused,

2. 2015 AIR (SC) 3549

shall be refunded to him. Consequently, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T. RAJANI

Date: 23.10.2018

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