SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1123 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused, aggrieved by the Judgment, dated 11.08.2006, passed in C.C.No.20 of 2001, by the Court of Special Judge for SPE & ACB Cases, Vijayawada, by virtue of which the trial 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 one year and also to pay a fine of Rs.2,500/- in default to suffer simple imprisonment for three months for the offence under Section 7 of the Act and also to under Rigorous Imprisonment for a period of one year and also to pay a fine of Rs.2,500/- in default to suffer simple imprisonment for three months for the offence under Section 13(1)(d) r/w 13(2) of the Act.

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

The complainant and his brother-in-law purchased two house plots measuring 244 sq.yds., each from Smt.Susheela of Hyderabad, who already obtained permission for sale from the Urban Land Ceiling Authorities, Vijayawada. Subsequently, the complainant intended to sell a part of his house i.e., 225 sq.yards to one P.Nageswraa Rao with a view to meet the household necessities. On 04.05.2000, the complainant applied to the Urban Land Ceiling Authorities to grant him permission to sell part of his house site. On 06.05.2000, one surveyor of the

Urban Land Ceiling office went to the above house site of the complainant, drew a sketch of the same and forwarded the same to the accused for further process. After that, many times, the complainant went and met the Urban Land Ceiling officials i.e., the Special officer and the office superintendent, but in vain and further they learnt that he had to observe certain formalities to get his work done. On 14.06.2000 evening, the complainant met the accused in his office and enquired about the permission, thereby the accused replied that unless a bribe of Rs.1,000/- is paid to him, his work would not be done and also asked him to meet him on the next working day i.e., 16.06.2000, along with bribe amount, for which the complainant reluctantly agreed to pay the bribe amount and proceeded to the office of DSP, ACB, Vijayawada and presented a report against the accused. The DSP, ACB, after observing all the necessary formalities, registered the report of the complainant as a case in Crime No.7/ACB-VJA/2000 under Section 7 of the Act and conducted investigation. During investigation, the DSP conducted trap proceedings, recovered the tainted currency notes and the material objects and after complying with all the legal formalities, arrested the accused.

3. The trial court took the case on file and after complying with all the legal formalities, framed charge 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 8 and Exs.P1 to P16, Ex.X1, and MOs.1 to 8 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 his evidence and did not choose to adduce any oral evidence, but Ex.D1 was marked.

4. After considering the evidence and 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 failed to appreciate Ex.P8 in proper perspective and acquit the accused from the charges levelled against him. The trial court convicted the accused only on the presumptions and assumptions of the case, in spite of clear evidence on record. The trial court failed to see the evidence of PW3, that he did not state either in his statement recorded under Section 164 CrPC or in the evidence before the court, that the accused did not demand any bribe. The trial court failed to appreciate that MO3 was recovered near telephone booth, in the ground floor and not from the physical possession of the appellant as per Ex.P13. The trial court failed to see that the evidence of PWs.3, 4 and 5 is not consistent, and that PW3 did not support the prosecution.

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

7. The counsel for the appellant mainly bases his argument on the rough sketch, which was prepared by the police, wherein the tainted amount was shown as lying at a place outside the office of the appellant, on the stair case. With the help of the said rough sketch, the counsel contends that the accused in fact was going down the steps and the complainant met him on the way and there was handkerchief, in which the tainted amount was kept; the appellant asked the accused to verify whether the said Handkerchief belongs to him and hence, the accused took the handkerchief into his hands, which contained the tainted amount and threw it there, as the handkerchief and the amount did not belong to him and hence, his hands got tainted.

8. The Public Prosecutor, on the other hand, contends that the said circumstance alone cannot form a basis to acquit the accused and disbelieve the version of the prosecution witnesses, more particularly, PW3, who categorically stated that he has given the amount to the accused in pursuance of his demand made for bribe.

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

1. Whether the prosecution could prove the alleged demand made by the accused beyond all reasonable doubt.
2. Whether the judgment of the court below is sustainable.
3. To what result.

POINT No.1: -

8. The version of the complainant, who was examined as PW3, in his chief-examination is that he was running business under the name and style of M/s.Bhavani Steel Corner, Besant Road, Vijayawada and purchased house site from G.Suseela in the year 1991. He intended to sell the site to one P.Narayana Rao and in that connection he had to seek permission from the Urban Land Ceiling Authority. On 04.05.2000, he approached the office and presented Ex.P2 application along with notarised affidavit. Though he does not remember to whom he has submitted the application, he states that he submitted the same in the Urban Land Ceiling Authority office. Subsequently, a surveyor came to his house site i.e., on 06.05.2000 and took measurements. The surveyor informed him that his part of work is over and the remaining work is to be done by the accused. Thereafter, for every 2 or 3 days, he used to meet the accused for obtaining permission to sell his land. As and when he met the accused, he used to inform him that the work will be over in a short time. On one occasion, he met PW1, who is a retired Superintendent, who worked in A-section in ULC Office, Vijayawada, during the relevant period and enquired about the permission to sell his land, after informing her about Ex.P2. He was told by her that he has to observe the formalities of the office, failing which his work will not be completed. He was asked to approach the accused and he was further asked whether he has given any amount either to the accused or

to the Special Officer for which, he replied her that he did not pay any amount to them. He asked her as to how much amount has to be paid to them. But she expressed that she was not supposed to say anything in that connection. As he himself intended to pay the bribe amount, he prepared to pay the bribe amount to the RI, in order to complete his work. As he was roaming around the office of the accused for a period of 40 days, at his instance, he himself, decided to lodge a report against him, with the ACB. On 14.06.2000 he went to the office of ACB, DSP, Vijayawada and presented a complaint marked as Ex.P7. Then trap proceedings were prepared and later on, during the trap proceedings, PW3 proceeded to the office of the accused, which was located in the first floor of the building. But the accused was not found in his seat. PW3 was coming down, to inform the same to the DSP. But while he was coming through the stair case, he met the accused at the down floor stair case and when he was offering the tainted amount, the accused asked him to keep the amount in his kerchief which he was holding in his hand. After receiving the amount, the accused came down from the ground floor stair case. Thereafter, he gave the prearranged signal to the trap party members and when they rushed to the place from the stair case of the ground floor, he showed it to the trap party members that the accused is the person who received the tainted amount from him. The trap party members caught hold of the accused and took him into the office room. He was asked to wait outside. 1½ hour thereafter he was called by the DSP into the office room of the accused and was enquired as to what had transpired between him and the accused prior to the arrival of the trap party members and he gave his version, which was recorded by one of the mediators. His statement under Section 164 CrPC was also got recorded. PW3 was at that stage declared hostile.

In the cross-examination done by the Public Prosecutor, he admitted that it is mentioned in the report given by him that the accused demanded him Rs.1,000/- on 14.06.2000 and as bribe. He further directed him to give the same on 16.06.2000. He also admitted that he stated before the Magistrate that the accused threw away the kerchief along with the tainted amount and the amount fell on the floor near the telephone booth and the DSP collected the tainted amount along with kerchief and took the accused into his office room. He also admitted that he stated before the Magistrate that a broker sitting on the steps in the office of the accused told him that his work would not be completed unless he pays the amount and on his enquiry as to how much amount has to be paid, he told him that Gunadala area land per yard is Rs.2,500/- and amount to be paid per yard is Rs.10/-. Then he informed him that he would pay Rs.1,000/- and asked him to get his work done and he told that he had to distribute Rs.2,000/- in the office only and if so what would remain for him and in the meanwhile another person came and told him that if he would pay Rs.1000/- to the accused, his work would be done.

9. PWs.1 and 2 are hostile witnesses. They are retired officials in the ULC Office, Vijayawada. According to PW1,

he came to know about the trap proceedings when PW3 approached him one week prior to the trap. He enquired about the accused and he informed him that he is not available in the office. PW2 states that PW1 submitted an application in their office on 04.05.2000 and it was initialled by the officer on 05.05.2000. On 13.06.2000, the Assistant clerk by name Prasad forwarded the same to him along with the remarks, in proforma. On the same day, he made an endorsement, recommending for permission to sell the land and he forwarded the file to Muralidhara Rao-LW2, Special Officer of Urban Land Ceiling Office for approval and he approved the file on 14.06.2000. He stated that he can identify the signature of LW2. He was on duty on the date of trap. His seat and the office seat of the accused were located in the same office hall, at a distance of 20 feet. While he was working, ACB officials entered and conducted test to both the hands of the accused and his handkerchief. He did not observe whether the test yielded any result. He was informed by the ACB Officials that the test proved positive. He was enquired by the DSP about the file and the DSP seized the file from PW1.

10. PW4, who is one of the mediators for the trap proceedings, deposed that after preparing the trap proceedings, they proceeded in a car, along with PW3. PW3 proceeded to the office of the accused while they took vantage positions at 04:40 PM and they rushed to the stair cases of the ground floor. On that, PW3 showed the accused and stated that he gave the tainted amount to him. They caught hold of the accused and

took him to his office room. The DSP, after ascertaining the identity of the accused, disclosed his identity and he conducted SC Solution test to both hand fingers of the accused and it proved positive. On enquiry by the DSP about the tainted amount, the accused produced the tainted amount which was kept in a kerchief, form out of his pocket and on instructions of the DSP, the mediators verified the serial numbers of the denomination with that of the serial numbers noted by them and found them tallying. The rough sketch was also prepared in his presence. In the cross-examination, he admitted that the shoulders of the accused were caught hold of by the trap party members and he was taken into the office room. He admitted that the rough sketch, Ex.P13, shows that the tainted amount was found lying by the side of telephone booth and it is marked as Ex.X1. It was suggested to him that the version given by the accused was not incorporated in Ex.P14 and was deliberately suppressed.

11. PW5 is the Additional Superintendent, ACB, Vijayawada, during the relevant period, who received Ex.P7 report from PW3. He secured the mediators and prepared the pre-trap proceedings. After explaining the procedure to PW3 and after demonstrating the phenolphthalein powder test, they proceeded to the office of the accused at 03:45 PM. PW3 proceeded to the office of the accused, while they took vantage positions, at 04:45 PM. The trap party members received the pre arranged signal from PW3 and they all rushed to the stair case of the office of the accused. PW3 showed the person who was getting

down from stair case steps and informed them that he is the person who received the tainted amount from him. They surrounded him and stopped him and took him to his office room, situated in the third floor. Then he asked the accused to produce the tainted amount, which was accepted by him from PW3. On that he took out one hand kerchief from his upper shirt pocket and produced before them. They found the tainted currency notes inside the kerchief. The same were seized and test was conducted, which turned positive. The file relating to PW3 was also seized. He searched the person of the accused and found an amount of Rs.4,490/- in his pant pocket and returned to the accused after he gave satisfactory explanation. In the cross-examination, he admitted that as per Ex.P5, a surveyor submitted his report on 05.06.2000 and the accused submitted the report on 09.06.2000 under Ex.P4. and after submitting the report of the accused to his higher officials, accused is no way concerned with the file. He also admitted that the accused was taken by them from the ground floor and he was at the telephone booth. They observed the same persons coming down and going up in the office building but they did not examine any of them. He did not examine the person, who used to run the telephone booth and he did not observe whether any such person was present in the telephone booth. The shirt pocket of the accused was not subjected to chemical test. He also admitted that in Ex.P13, it is shown that the tainted amount was found lying on the floor near the telephone booth. When it was suggested to him that he has seized MOs.3 and 7 from the floor, near to the telephone booth when they were found lying on the floor, except denying the said suggestion, he did not offer any explanation as to why it was shown in Ex.P13 as such. He also admitted that Exs.P2 to P5 file was produced by PW2 from the office room of Special Officer. When he was re-examined, also he could not clarify as to why he has shown in Ex.P13 that the amount was found lying near the telephone booth.

12. PW8, who was the Special Officer, Urban Land Ceiling and Competent authority during the relevant period, spoke about the application given by PW3 on 05.05.2000. He referred the same to D2 clerk of their office. After making his endorsement, the file was numbered and the file was again returned to him in the month of June, for his approval i.e., on 14.06.2000 and he endorsed his approval of sanctioning the permission. PW3 met him on 13.06.2000 and enquired about his file. PW8 informed him that he will look into it. In the cross-examination, it was elicited that as per the Urban Land Ceiling Act, if any, individual submitted the application for permission of sale of site, the office administration can dispose it of within a period of sixty days. He admitted that as per the endorsement on his file, the accused submitted his report on 09.06.2000, after receiving the file from the Surveyor, on 05.06.2000. He also admitted that when once the file was processed form the accused, the file was not go back to the accused.

13. From the above evidence, two clinching facts surface. One is that there was no official favour pending with the accused as on the date of the trap. The evidence of PW3 is not clear with regard to the date of demand. Whether the demand was prior to the accused signing on the file or whether it was after, is not stated by PW3. He only speaks about the surveyor coming to his house on 06.05.2000 and taking measurements and thereafter, except narrating the facts, he does not relate them to any specific dates. In his chief examination, he does not categorically state that the accused made any demand with him. It appears that he himself entertained an opinion that unless the probable amount is paid, his work will not be completed. It is only in the cross-examination done by the Public Prosecutor that he admits that he mentioned in Ex.P7 that the accused demanded him to pay the bribe amount. Even if the evidence of PW3 is considered as reliable and even if he is considered as a witness, who was won over by the accused, the statement given by him before the Magistrate under Section 164 CrPC, throws any amount of doubt on the veracity of the witness. He admits that he stated before the Magistrate that the accused threw away the kerchief along with the tainted amount and the amount fell on the floor near the telephone booth. He also admits that he stated before the Magistrate that he was asked to give the signal by keeping his hand on his head as if he is combing and accordingly he gave the signal. Whereas in his evidence before the court he changed his version and states that the signal is given in the form of wiping his face with the handkerchief.

14. The contention of the Public Prosecutor that the evidence of PW3 cannot be ignored by considering the rough sketch, is meritless, as the evidence of PW3 supports the rough sketch and the undisputed fact that remains is that the rough sketch showed the tainted amount lying at the stair case. The failure of the investigating officer to explain the reason for showing the tainted amount lying at the stair case, would probabilise the case of the accused that PW3 met him on the way and asked him to verify whether the handkerchief lying on the stair case belongs to him and hence he took it in his hands and as it does not belong to him, he threw it away on the stair case. Even if it is considered that the argument of the Public Prosecutor, that it is improbable that the accused would throw the handkerchief and the amount on the ground, only as it does not belong to him, is cogent, the evidence of PW3 coupled with the evidence of the investigating officer-PW5, would probablise the pointed out unnatural conduct of the accused. When there is no official favour pending on the date of trap and when the evidence of PW3 is not clear with regard to the date of demand and when the version of the accused is probablised by not only the evidence of PW3 but also the rough sketch, it would not be safe to conclude that the tainted amount was recovered from the accused.

15. The counsel for the appellant relies on a judgment of this court in *Nagulapati Mallaiah v. State*[1] wherein this court held

[1] 2013(2) ALD (Crl.) 1 (AP)

that mere fact that the chemical test proved positive and tainted amount is recovered at the instance of the accused does not automatically enable the court to draw presumption against the accused under Section 20. It also held that the facts that both the hands of appellant yielded positive result when subjected to chemical test; tainted amount recovered at the instance of appellant; and no spontaneous explanation from the appellant as to how tainted amount came into his table drawer; are not sufficient to come to a conclusion automatically that appellant received tainted amount from the complainant voluntarily. The facts of this case also indicate that the offence against the accused is not established by the prosecution by clinching evidence, under which circumstance drawing presumption under Section 20, will not be justified. The law is well settled that the accused need not prove his case beyond reasonable doubt and it would suffice for him to prove his defence by preponderance of probabilities.

16. Another decision relied upon by the counsel for the appellant is that of the Full Bench of the Supreme court in *B.Jayaraj v. State of Andhra Pradesh*[2], which was to the effect that when the complainant does not support the prosecution case insofar as the demand by accused is concerned and when prosecution does not adduce any other evidence to prove the demand, demand of gratification cannot be held to be proved only on the basis of complaint filed and evidence of

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2 2014(2) ALD (Crl.) 73 (SC)

panch witness and mere possession and recovery of tainted money from the accused, without proof of demand.

17. The counsel for the appellant relies on another decision of this court in *Karri Venkata Rama Reddy v. State of Andhra Pradesh*[3] which is to the effect that when there is no official favour pending with the accused by the date of alleged demand and trap, conviction cannot be recorded against the accused.

18. The counsel for the appellant also relies on a judgment of the Supreme Court reported in *P.Satyanarayna Murthy v. Dist. Inspector of Police and another*[4] with regard to the proof of demand. It was held therein that proof of demand is an indispensable essentiality for an offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in the absence thereof, unmistakably charge therefor, would fail.

19. In view of the above legal and factual situation, this court opines that the prosecution failed to prove the alleged demand made by the accused and accordingly, point No.1 is answered.

<u>POINT No.2</u>: -

20. In view of the conclusion arrived by this court under point No.1, this court opines that the judgment of the court below cannot be sustained and the same is accordingly set aside.

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3 2015 (1) ALD (Crl.) 833
4 2015(2) ALD (Crl.) 883 (SC)

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

21. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant in the Judgment, dated 11.08.2006, passed in C.C.No.20 of 2001 by the Court of Special Judge for SPE & ACB Cases, Vijayawada. Consequently, the appellant is acquitted of the charge 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.

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

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T. RAJANI, J

October 30, 2018
LMV