THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1206 OF 2006

JUDGMENT:

1 Aggrieved by the judgment dated 10.04.2006 passed in C.C.No.20 of 2001 on the file of the Court of the Special Judge for SPE & ACB Cases, Nellore, wherein and whereby the respondent-Accused Officer was found not guilty for the offences charged under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and consequently acquitted of the said charges, the State represented by Inspector of Police, Anti-Corruption Bureau, Kadapa District, Tirupati Range, preferred this appeal under Section 378(3) & (1) of Cr.P.C.

2 The factual matrix that lead to filing of the present appeal is as follows:

(a) On 13.06.2000 P.Narasimhulu - Fisheries Development Officer, Brahmamgari Matham reservoir, Kadapa District (P.W.1) submitted Ex.P.1 complaint to the Dy. Superintendent of Police, ACB, Tirupati Range (P.W.8). Basing on the same P.W.8 registered a case in Cr.No.6/RCT-TCD/2000 dated 14.6.2000 under Sections 7 and 13 (1) (d) of Prevention of Corruption Act. Ex.P.13 is the original F.I.R. During the course of investigation it is revealed that at the relevant point of time, P.W.1 was in-charge of Brahmamgari Matham reservoir. In the said fish farms, 6.10 lakh fish seed was dropped and there was acute shortage of water in the fish farms tank due to drought condition prevailed in Kadapa district during the year 1999-2000 because of which some seed died. When this matter was brought to the notice of the Commissioner, Fisheries department, Andhra Pradesh, Hyderabad, he directed the accused officer-Regional Deputy Director, Fisheries Department, Kurnool, as he then was, to shift the fish seed to the backwaters of Somasila reservoir. Taking advantage of the instructions issued by the Commissioner, the accused officer created a fear complex in the mind of P.W.1 by saying that he would write a report by mentioning the shortage of fish seed and demanded a bribe of Rs.15,000/-, but ultimately agreed for Rs.10,000/-. Having no other alternative, P.W.1 lodged Ex.P.1 complaint to P.W.8, who after completion of necessary formalities, prepared pre-trap proceedings as per Ex.P.6.

(b) On 14.6.2000 P.W.1 approached the accused officer at about 11.00 PM in room No.109 of Ashoka hotel, Kadapa. The accused officer asked P.W.1 whether he came with the proposed bribe amount or not. P.W.1 handed over money of Rs.10,000/- to the accused officer and gave signal to the raiding party. Then P.Ws.2 and 8 and other mediators entered into the room where P.W.8 seized Rs.10,000/- from the accused officer and prepared panchanama - Ex.P.10. P.W.8 conducted sodium carbonate solution test on the accused officer and it yielded positive. After completion of necessary formalities, P.W.8 arrested the accused officer and released him on self bond. P.W.8 examined and recorded the statements of the witnesses. After receiving sanction order Ex.P.12, P.W.8 laid charge sheet against the accused officer for the offences under Sections 7, 11 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act and the Special Court has taken the cognizance of offence for the above Sections of law.

(c) On appearance of the accused officer, learned Special Judge had furnished copies of the documents as contemplated under Section 207 of Cr.P.C. After hearing both sides, learned Special Judge framed charges against the accused officer under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

(d) To prove the guilt of the accused officer, on behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.13 and M.Os.1 to 12 were marked. After completion of the evidence on behalf of the Prosecution, the accused officer was examined under Section 313 Cr.P.C., with reference to the incriminating material against him, which he denied. On behalf of the accused officer no defence witness was examined, but Exs.D.1 to D.3 were marked.

(e) Basing on the oral and documentary evidence available on record, the Special Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused officer for the offences charged under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and consequently acquitted him of the said charges. Hence the present appeal by the State.

3 The learned Special Public Prosecutor for ACB attacked the impugned judgment on the following grounds:

(i) The trial Court has not properly considered the oral testimony of P.Ws.1, 2 and 8.

(ii) The recitals of Ex.P.6 – pre trap proceedings and Ex.P.10 mediators report clearly establish that the accused officer received an amount of Rs.10,000/- from P.W.1 as bribe and that aspect was not considered by the trial Court and acquitted the accused officer on assumptions and presumptions.

(iii) The findings of the trial Court are not based on evidence much less legally admissible evidence; and

(iv) The findings recorded by the trial Court are perverse and are liable to be set aside. Therefore, it is a fit case to allow the appeal.

Per contra, Sri Hari Prasad Reddy, learned counsel for the accused officer, strenuously submitted that the Prosecution miserably failed to prove the demand and acceptance of bribe by the accused officer from P.W.1. He further submitted that mere recovery of tainted amount from the possession of the accused officer itself is not a valid ground to convict him. He further submitted that the findings recorded by the trial Court are based on evidence much less legally admissible evidence, therefore, this is not a fit case to interfere with the well considered judgment of the trial Court and hence the appeal is liable to be dismissed.

4 Now the points that would emerge for consideration in this appeal are:

> (i) Whether the prosecution proved the guilt of the respondent-Accused Officer for the offence under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act beyond all reasonable doubt? and
>
> (ii) Whether there is any flaw much less legal flaw in the findings recorded by the trial Court, to warrant interference by this Court?

5 Both the points are inter-linked; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

6 The first and foremost question that falls for consideration is 'whether the accused officer is a public servant as contemplated under Section 2(c) of the Prevention of Corruption Act'. As seen from the testimony of P.Ws.1, 3 to 6, at the relevant point of time, the accused officer was working as Regional Deputy Director, Fisheries Department, Kurnool. From the material placed before the Court, it can be held that the accused officer is a public servant, at the relevant point of time, as postulated under Section 2(c) of the Prevention of Corruption Act.

7 The next question that falls for consideration is 'whether there is a proper sanction to prosecute the accused officer or not'?

8 It is needless to say that no public servant can be prosecuted under the provisions of the Prevention of Corruption Act without obtaining necessary sanction from the competent Authority. The testimony of PW.7 clearly reveals that the Government issued Ex.P.12 sanction order after considering the material available on record. In the cross examination also P.W.7, in unequivocal terms, deposed that the Director General, ACB sent all necessary papers to the Government for issuance of sanction to prosecute the accused officer. In the cross examination of P.W.7 nothing is elicited to shake his testimony. The oral testimony of P.W.7 coupled with Ex.P.12 clearly

establishes that the competent authority i.e. Government issued sanction order to launch prosecution, in accordance with law, against the accused officer. The trial Court after considering the testimony of P.W.7 and Ex.P.12 arrived at a conclusion that the Government had issued valid sanction order. I am fully endorsing the findings of the trial Court on this aspect. The material placed before the Court clinchingly establishes that the charge sheet was also laid against the accused officer after obtaining necessary sanction from the Government.

9 The next question that falls for consideration is 'whether the prosecution proved the recovery of tainted amount from the possession of the accused officer or not'?

10 As seen from the testimony of P.W.2, on 14.06.2000 he went to the office of the ACB at 8.15 PM. His testimony further reveals that the Dy. Superintendent of Police introduced him to P.W.1 and *vice versa*. The testimony of P.W.2 clearly reveals that the investigating officer (P.W.8) directed one of the constables to conduct sodium carbonate solution test. His testimony further reveals that as directed P.W.8, the constable rinsed his hands in the tumbler and there was no change in the colour. As directed by P.W.8, the constable applied phenolphthalein powder to the currency notes supplied by PW.1. His testimony further reveals that P.W.8 handed over the currency notes to P.W.1 and directed him to hand over the same to the accused officer on demand. P.W.8 also deposed on the same lines that of P.W.2. In the cross examination of theses two witnesses nothing is elicited to disbelieve their testimony so far as pre-trap proceedings are

concerned. The oral testimony of PWs.2 and 8 coupled with Exs.P.4 to P.10 and M.Os.1 to 3 clearly reveals the conducting of pre-trap proceedings.

11 As seen from the testimony of P.W.1, as directed by P.W.8, he went to Ashoka hotel and knocked the doors of room No.109. After some time he came back and gave signal by switching the torchlight on and off. Thereafter the investigating officer along with mediators entered into the room No.109 and enquired the identity of the person who in turn disclosed his identity as the accused officer herein. As seen from the testimony of P.W.8, the accused officer brought tainted currency notes which were kept in the folders of pyjama in a rexin Ecolac brief case by opening it. Thereafter P.W.8 mixed sodium carbonate powder in the tumbler and directed the accused officer to rinse his right hand fingers in a tumbler whereupon his right hand fingers turned into pink colour. Again the accused officer rinsed his left hand fingers in the tumbler which also turned into pink colour. M.O.4 is pyjama of the accused officer, M.O.5 is bottle containing right hand wash of the accused officer, M.O.6 is bottle containing the left hand wash of the accused officer, M.O.7 is the bottle containing wash of pyjama of the accused officer, M.O.8 is the lungi of the accused officer, M.O.9 is the banian of the accused officer, M.O.10 is the bottle containing the wash of the lungi, M.O.11 is the bottle containing the wash of the banian and M.O.12 is the sample of sodium carbonate powder.

12 P.W.8 also deposed on the same lines that of P.W.2. In the cross examination of these two witnesses nothing is elicited to

shake their testimony with regard to the conducting of post-trap proceedings. By examining P.Ws.2 and 8 and marking Ex.P.8 to P.10 and M.Os.4 to 12, the prosecution clearly proved the post trap proceedings wherein the chemical test conducted on the accused officer proved positive. Basing on the material available on record, it can safely be held that the tainted money was recovered from the possession of the accused officer on 14.6.2000 in room No.109 of Ashoka hotel, Kadapa.

13 Before adverting 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) 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

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[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

received for doing or forbearing from doing any official act; and

14 Let me consider the facts of the case on hand in the light of the above legal principles.

15 It is not in dispute that P.W.1 set the criminal law into motion by lodging Ex.P.1 complaint with P.W.8. A perusal of the record reveals that at the relevant point of time, the accused officer was working as Regional Deputy Director in the Fisheries Department at Kurnool. P.W.1 was working as Fisheries Development Officer at Brahmamgari Mattam Reservoir, Kadapa district, P.W.3 was working as Assistant Director of Fisheries department, Chittoor, holding full additional charge of Assistant Director, Fisheries Department, Kadapa, P.W.4 was working as MPDO, Gopavaram Mandal, P.W.5 was working as Assistant Director, Fisheries Department (Finance & Planning) A.P. Office of the Commissioner of Fisheries, Hyderabad. As seen from the testimony of the above witnesses, 6.10 lakhs fish seed was dropped in Brahmamgari Matham reservoir. It is not in dispute that due to acute drought there was no sufficient water in Brahmamgari Muttham reservoir. As seen from Ex.D.1, on 01.02.2000 P.W.1 addressed a letter to the Assistant Director of Fisheries, Kadapa seeking permission to shift the fish seed from Brahmamgari Matham to Somasila reservoir during the year 1999-2000. A perusal of Ex.D.2 reveals that the Assistant Director, Kadapa addressed a letter on 07.02.2000 to the Regional Deputy Director of Fisheries, Kurnool i.e. accused officer herein seeking permission to stock 6.10 lakhs of M.C. seed (Adv.F1) in Somasila backwaters on free of cost. In the month of

February 2000, the accused officer addressed a letter to the Commissioner of Fisheries, Andhra Pradesh, Hyderabad for shifting of fish seed. A perusal of Ex.D.3 clearly reveals that the Commissioner of Fisheries, Hyderabad permitted P.W.1 to drop M.C. seed available at Brahmamgari Matham reservoir in Somasila backwaters, kadapa. There is no much dispute with regard to the above said aspects.

16 At this juncture, the crucial question that falls for consideration is 'whether the accused officer demanded an amount of Rs.15,000/- and ultimately agreed to receive Rs.10,000/- as bribe from P.W.1 in order to submit a report in his favour'. It is needless to say that FIR is not an encyclopaedia to include each and every detail minutely. At the same time, the *de-facto* complainant has to mention the material or relevant facts in the complaint. As per the recitals of Ex.P.1 complaint, the accused officer demanded an amount of Rs.15,000/- and agreed to receive Rs.10,000/- as bribe from P.W.1. Ex.P.1 is conspicuously silent with regard to the date, time and place where the accused officer demanded bribe or gratification from P.W.1. In the cross-examination P.W.1 in unequivocal terms deposed that he did not mention in Ex.P.1 complaint about the date, time and place where the accused officer demanded the bribe of Rs.10,000/- from him. In the cross-examination P.W.8 admitted that P.W.1 did not state before him the exact date, month and place where the accused officer demanded bribe from him. He categorically admitted that Ex.P.1 is silent with regard to the place and time of demanding bribe by the accused officer from P.W.1. From a careful perusal of the testimony of P.Ws.1

and 8 coupled with Ex.P.1, it is manifest that there is no clarity with regard to the exact time, date and place where the accused officer demanded bribe from P.W.1. The charge sheet is also silent with regard to the above said aspects. The trial Court framed the charge as if the accused officer demanded bribe from P.W.1 on 13.06.2000. The accused officer faced the trial as if he demanded illegal gratification from P.W.1 on 13.06.2000. It is needless to say that the accused officer put forth his defence basing on the charges. Therefore, basing on the material available on record, the irresistible conclusion that can be drawn is that the prosecution failed to prove the exact date, time and place of alleged demand of bribe by the accused officer from P.W.1.

17 During the course of trial, P.W.1 introduced a new version that on 13.6.2000 the accused officer demanded bribe over phone. Admittedly, no call data was placed before the Court to establish that on 13.6.2000 the accused officer contacted P.W.1 over phone. In the cross examination P.W.1 admitted that he did not mention in Ex.P.1 or in his 162 Cr.P.C statement that the accused officer demanded bribe from him over phone. The investigating officer, P.W.8 categorically admitted in the cross-examination that P.W.1 did not mention in Ex.P.1 complaint or in his 162 Cr.P.C. statement about the accused officer demanding bribe from him on 13.6.2000 over phone. A material fact which was deposed by the witness before the Court without mentioning the same in the complaint or 162 Cr.P.C. statement amounts to omission. The court has to consider whether such omission is a material one or not. In the instant case, non-

mentioning of demanding of bribe by the accused officer from P.W.1 over phone is a material omission which eventually discredit the prosecution version.

18 It is needless to say that the investigating officer has to record the spot explanation of the accused officer during the course of post trap proceedings. There is no whisper in the testimony of P.W.2 that P.W.8 had given reasonable opportunity to the accused officer to put forth his spot explanation immediately after seizure of M.O.3 currency notes. There is no whisper in the testimony of P.W.8 also that immediately after the seizure of M.O.3 he asked the accused officer to offer his spot explanation. The fact remains that no opportunity was given to the accused officer to explain the reasons for receiving an amount of Rs.10,000/- from P.W.1. Surprisingly, in Ex.P.10 it is mentioned as if the investigating officer elicited spot explanation from the accused officer. Mediators report is only a corroborative piece of evidence. In the absence of corroboration, much weight cannot be attached to the recitals of the mediators report. Mere mentioning of spot explanation in Ex.P.10 mediators report by itself is not a valid ground to believe the same as a gospel truth.

19 It is not in dispute that P.W.3 was in room No.109 of Ashoka hotel on 14.6.2000 at the time of post trap proceedings. For one reason or the other, the investigating officer has not chosen to select him as one of the mediators. As per the testimony of P.W.3, P.W.1 came to the hotel and handed over Rs.10,000/- to the accused officer towards discharge of debt

amount. As seen from the testimony of P.W.1 he borrowed an amount of Rs.10,000/- from the accused officer for the purpose of feeding and breeding the fish seed in Brahamamgari Matham reservoir. His testimony further reveals that the accused officer insulted him for non-payment of Rs.10,000/-. In the cross examination he categorically admitted that he does not remember the words uttered by the accused officer while handing over M.O.3 cash to him. The testimony of P.Ws.1 and 3 cast a cloud on the prosecution version.

20 Another interesting aspect is that as per the testimony of P.W.5, himself and another mediator have put their initials on the FIR. A perusal of the record reveals that Ex.P.5 was produced before the Court on 13.01.2006. This also indicates that the investigating officer has not properly conducted pre-trap proceedings. Non-production of Ex.P.5 up to 13.01.2006 before the court creates any amount of doubt in the mind of the court with regard to the procedure followed by the investigating officer during pre-trap proceedings. In view of the previous animosity the possibility of lodging a false complaint by P.W.1 cannot be ruled out completely.

21 As seen from the testimony of P.Ws.1 and 2, P.W.1 handed over Ex.P.4 proceedings to P.W.8 on 14.6.2000 at about 8.00 PM. As per the recitals of Ex.P.4 proceedings 6.10 lakhs fish seed was dropped in the backwaters of Somasila project, Kadapa. In Ex.D.2, the accused officer has categorically mentioned that 6.10 lakhs fish seed is available in Brahmamgari Matham reservoir. The material placed before the Court clinchingly establishes that

there is no deficiency of fish seed in the reservoir tank. In such circumstances, demanding of bribe by the accused officer from P.W.1 on 13.6.2000 is somewhat improbable. A perusal of Ex.P.4 reveals that the Assistant Director of Fisheries, Kadapa, Assistant Director of Fisheries, Hyderabad, MPDO Gopavaram and MRO Gopavaram and P.W.1 have attested Ex.P.4. This also clearly reveals that the accused officer alone is not competent to write some thing against P.W.1. In such circumstances, how the accused officer demanded bribe from P.W.1 is not properly explained by the prosecution. All these aspects clearly indicate that the prosecution has suppressed the material facts. The material placed before the Court falls short to establish two vital aspects viz., the accused officer demanded bribe from P.W.1 in order to do some official favour to P.W.1, and P.W.1 paid bribe amount to the accused officer in pursuance of his demand. In the absence of proof of demand and acceptance of illegal gratification by the accused officer, it is not safe to place reliance on Exs.P.6 and P.10. Mere recovery of tainted amount itself is not a valid ground to convict the accused officer, in view of the principles enunciated in the cases cited supra. The learned Special Judge has considered all these aspects in right perspective and arrived at a conclusion that the prosecution has failed to prove the guilt of the accused officer for the offences punishable under Sections 7, 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act beyond all reasonable doubt.

22 The Special Court has assigned reasons much less valid reasons to its findings. If the findings are based on no evidence or based on evidence, which is not legally admissible, then such

findings can be termed as perverse. In the instant case, the findings recorded by the trial Court are based on evidence more so legally admissible evidence. Therefore, I am unable to accede to contention of the learned Special Public Prosecutor that the findings recorded by the Special Court are perverse. There is no flaw much less legal flaw in the findings recorded by the trial Court. I am fully endorsing the findings recorded by the trial Court. There are no grounds much less valid grounds to interfere with the findings recorded by the trial Court. The appeal lacks merits and is liable to be dismissed.

23 Accordingly, the appeal is dismissed. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T. SUNIL CHOWDARY, J

5th February, 2018

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