SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.948 of 2006

JUDGMENT:

This appeal is directed against the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.21 of 2001 dated 18.07.2006 convicting the appellant-accused for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The facts of the case, briefly, as reflected in the charge sheet are as follows:

The accused worked as in-charge M.P.D.O., Talupula, Anantapur District from 01.06.1997 to 29.02.2000. The complainant, who was an organizer of Bhagat Singh Youth Association, applied for loan under the Chief Minister's Employment for Youth Programme, to start the project of sheep rearing, in the year 1998. The District Collector/Chairman sanctioned an amount of Rs.20,000/- as margin money and Rs.50,000/- as subsidy to the said youth association and the amount was credited into the account of the association held with A.D.C.C. Bank, Kadiri. Apart from that, the association deposited Rs.20,000/- and the bank gave a loan of Rs.10,000/- to the association. The complainant met the accused every alternative day since January 2000 and requested for release of the amount for purchase of sheep and the accused postponed the matter on some or other pretext. On 16.02.2000, at about 11 AM, when the complainant met the accused in his office and requested for release of the amount, the accused demanded an amount of Rs.3,000/- towards bribe, for release of the money, for purchase of sheep. When the complainant pleaded inability to pay the amount, the accused reduced it to Rs.2,000/- and emphasized that unless his demand is complied his work would not be done. Under unavoidable circumstances, the complainant agreed to pay the said amount. But, however, as he was unwilling to pay the said amount, he lodged a complaint before the DSP, ACB, Anantapur on 16.02.2000 at 5 PM and the DSP prepared the trap proceedings. On the date of trap i.e. 17.02.2000, at about 10.25 AM, when the complainant approached the accused in his office, the accused reiterated the demand and accepted the tainted currency notes from the complainant. On receiving the pre-arranged signal, the trap party went inside the office of the accused and recovered the tainted amount form him and the phenolphthalein test conducted on him also yielded positive result. After due investigation, charge sheet was laid against the accused for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The case was taken on file by the Court below and charges were framed for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, which were read over to the accused. After recording the plea of not guilty by the accused and on his claim for trial, the Court below conducted trial of the case and P.Ws.1 to 9 were examined and Exs.P1 to P13 and M.Os.1 to 8 marked on behalf of the prosecution. The accused denied the evidence of the prosecution when he was examined under Section 313 Cr.P.C and got examined D.Ws.1 to 6 and got marked Exs.D1 and D2.

The Court below, after considering the material and the evidence on record, passed the impugned judgment.

3. The appeal is preferred on the grounds that the Court below, finding that even though the accused could not show any favour to the *de facto* complainant, convicted the accused; it failed to take into consideration the spontaneous explanation given by the accused that the amount was taken on behalf of one Uttanna, P.W.6; it failed to consider that P.W.6 had developed his version before the Court and for the first time, he tried to implicate the accused which is an after thought and it failed to see that the accused has discharged his burden under Section 20 of the Prevention of Corruption Act. Based on the above grounds, the appellant seeks this Court to set aside judgment of the Court below.

4. Heard the counsel for the appellant and the learned Public Prosecutor appearing for the respondent.

5. The counsel for the appellant raises two defences viz. (1) that no official favour was pending with the accused as on the date of trap or on the date of demand, as the purchase of sheep is a pre-condition for the release order and the evidence shows that sheep was not purchased by the date of the alleged demand made by the accused and (2) that amount received by the accused is on behalf of P.W.6, who is Uttanna, working as an attender in their office towards discharge of loan taken by P.W.1 from P.W.6.

6. The learned Public Prosecutor, on the other hand, submits that the said two defences do not stand, in the light of the evidence of P.Ws.6 and 3.

7. Based on the above arguments and the material on record, the following points can be taken up for consideration:

1. Whether any official favour was pending with the accused by the date of demand or the date of trap.
2. Whether the accused could discharge his burden of proving that he accepted the amount not as bribe but otherwise.
3. Whether the judgment of the Court below is sustainable.
4. To what result.

POINT Nos.1 and 2:

8. The contention of the counsel for the appellant is that unless the sheep are purchased, the question of the accused issuing release order does not arise.

9. The said contention can be examined on the basis of the evidence of P.Ws.1, 3 and 4 where the witnesses spoke about the procedure for obtaining the release order.

10. P.W.1 is the organizer of the Bhagath Singh Youth Association, Anantapur and on behalf of the association, they applied to the MPDO for financial assistance under CMEY scheme. In the month of January 1999, the M.P.D.O., M.R.O and other officials called them for interview and were interviewed and they were informed that they were selected and their signatures were obtained in the applications and in the

agreement in the month of April 1999. They were advised to open an SB Account on behalf of the association. They deposited Rs.20,000/- into that account and an amount of Rs.10,000/- was added to their account by the bank. The District Collector sanctioned Rs.70,000/- and it was credited into their account. The accused directed them to construct a sheep pen and sanctioned an amount of Rs.8,000/- towards the construction of the same, which was done by Y. Ramaiah and a cheque was issued in his name by the accused. For the selection of sheep, the Veterinary doctor has to purchase the sheep for them, from the sheep owner and the M.P.D.O has to release the cost of those sheep by means of a cheque in the name of the sheep owner from their association account. He further explained that the accused has to first issue the release order. The complainant has been meeting the accused every alternative day seeking to issue release order. On 16.02.200 at 11 AM, he went and met the accused and pleaded with him that he has been going around him since 05.01.2000 till 15.02.2000 for the purpose of issuance of release order and as to how many times, he can make him go around, for which the accused replied that how many times he may roam around, it is of no avail, as, if he issues the cheque in the name of the sheep owner, he will encash it and give the sheep to them and they will take the sheep and what benefit would he derive by it. Saying so, the accused demanded Rs.3,000/- as bribe and asserted that unless he brings the demanded bribe amount and pay to him, he will not issue the release order. The complainant pleaded with the accused that they cannot pay the amount and after bargaining, the amount was reduced to Rs.2,000/-. P.W.1 assured the accused that he would come and pay the amount.

The accused insisted that he shall pay that amount on 17.02.2000 at 10 AM. As the accused was not willing to pay the bribe to the accused, on the same day i.e. on 16.02.2000, he approached the ACB authorities and thereafter, on 17.02.2000, the trap party proceeded to the office of the accused and reached there by 10.15 AM and the accused was sitting in the office and on his reminder whether the complainant brought the bribe amount, the complainant gave the amount and the accused kept the amount in his left side pant pocket. He came out and gave the pre-arranged signal to the trap party. Then the ACB authorities went into the office of the accused while he was asked to wait outside.

In the cross-examination, with regard to the procedure, he stated that the sheep pen was got constructed through one Ramaiah to whom Rs.8,000/- was paid and he does not know whether there is one Veterinary doctor at Peddannavari Palli and whether he is the sectorial officer. According to him, on 10.12.199, the Veterinary doctor Naik signed the release order for grounding as sectorial officer, for Rs.8,000/- to be released in favour of Y. Ramaiah for the purpose of shed amount and the M.P.D.O signed the release order for grounding on 13.11.1999. The said release order is marked as Ex.D1. He states that the doctor will examine the sheep, select them and the same would be purchased by them. They enquired with the Veterinary doctor as to how many sheep they would get with the amount sanctioned to them and he replied that he can only tell after examining the sheep proposed for purchase. The bank officials will not come to the place where the sheep is purchased. The Veterinary doctor did not inform him as to where the sheep was going to be purchased. Ex.P4, which is the resolution, is stated to be as follows "*Since the amounts released by the Govt. for rearing the sheep was credited to the bank under the scheme in order to ground the veterinary doctor of Peddannavari Palle cum Sectorial Officer advised for construction of shed for rearing the sheep and for the said construction Sri Y. Ramaiah son of Chinnappa, Kothapulavari palli has suppled the material and for payment of the amount since the above officer recommended for the release of Rs.8,000/- from Kadiri A.D.C.C. bank account No.695 and to draw the same by cheque and to be paid with the consent of M.P.D.O Talupula Mandal Parishat and for the said purpose the members accordingly request in this resolution ...*"

11. Hence, from the evidence of P.W.1, it can be seen that the sheep would only be selected and only after the accused issues the release order, the purchase of sheep would be made. It is not in consonance with the contention of the counsel for the appellant that it is only after the purchase of the sheep, the release order would be issued by the accused.

12. P.W.3 worked as Junior Assistant in the office of the MPDO during the relevant period. He also spoke about the release of the amount by the District Collector and remitting of the amount sanctioned by the District Collector into the account of the beneficiary and releasing of an amount of Rs.8,000/- for the construction of sheep pen. He also stated that the MPDO has to issue the release order for purchase of sheep. Till 17.02.2000, the sheep for purchase were not selected.

13. The evidence of P.W.3 supports the evidence of P.W.1 with regard to the release order. He also stated that the sheep would be purchased only on issuing the release order. But according to him, till 17.02.000, the sheep for purchase were not selected. But he did not produce any document, which would show that the sheep for purchase were not selected. He also did not state whether any written proceedings would be there for selection of sheep.

He stated in the cross-examination that the veterinary doctor, along with the beneficiary, goes for the purchase of the sheep, after identifying the sheep and the veterinary doctor recommends payment of the cost of the sheep to the sellers and then the MPDO issues release order. Hence, even from the fact elicited in the cross-examination by the accused, what comes out is that the issue of release order is a pre-condition for the purchase of sheep.

14. Hence, in the circumstances where P.W.3 could not state that there was any proceeding evidencing the selection of sheep, the evidence of P.W1 need not be disbelieved. P.W.4 is the Senior Assistant in the office of the Ananthapur Self Employment and Training, since 1990. He spoke about the procedure for registration of the youth association. Hence, it stands proved beyond all reasonable doubt that it is the issuance of the release order that is prior to the purchase of the sheep. Hence, it can be concluded that the official favour was very much pending with the accused by the date of the alleged demand and trap.

15. As regards the second defence taken by the accused, which is that the amount was given to the accused towards discharge of loan taken by P.W.1 from P.W.6, who is the attender in the same office, the evidence of P.W.6 can be looked into wherein it is stated that on 17.02.2000, he was present in the office at 10.30 AM and at 11 AM, the DSP, ACB called him inside the office room of the accused and asked him whether he has given any amount to P.W.1 or his father and he replied in the negative. He categorically stated that he never asked the accused to collect nay amount on his behalf, from P.W.1. Hence, the evidence of P.W.6 would totally negative the second defence taken by the accused.

In the cross-examination, he states that he sated to the Inspector that he does not know P.W.1 or his father. Apart from that, it can be understood from the evidence of P.W.6 that he attended office on that day at 10.30 AM while the trap was at 10.25 AM. If really the amount was given to the accused towards the discharge of loan taken from P.W.6, there is no reason for the accused to accept the amount, as P.W.6 was not on leave and he is expected to come to the office. Hence, it has to be considered that the defence taken is only to save himself and to render some explanation. Hence, once the acceptance of the amount is proved by the prosecution, it is the burden of the accused to prove that the acceptance by him was not towards bribe and is otherwise, which the appellant herein failed to.

The points are accordingly answered against the appellant.

POINT No.3:

In view of the conclusions reached under point Nos.1 and 2, this Court opines that the judgment of the Court below needs no interference.

POINT No.4:

In the result, the criminal appeal is dismissed confirming the conviction and sentence imposed on the appellant-accused vide the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC.No.21 of 2001 dated 18.07.2006.

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

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T. RAJANI, J

December 14, 2018
DSK