IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

Criminal Petition No.5647 of 2015

Between:

O. Yellamanda Raju. ... Petitioner/Accused No.1

AND

The State of Andhra Pradesh
Rep. by its Special Public Prosecutor, ACB Cases,
High Court of Judicature at Hyderabad,
For the State of Telangana and the State of Andhra Pradesh
and another. … Respondents

DATE OF JUDGMENT PRONOUNCED: **14.06.2018**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No

3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioner : Sri B. Chandrasen Reddy

**^ Counsel for Respondent No.1 : Sri P.Udaya Bhaskar Rao,
Special Public Prosecutor for ACB**

^ Counsel for Respondent No.2: ----

< Gist:

> Head Note:

? Cases referred:

1) AIR 1996 SC 490

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.5647 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/AO1 seeks to quash the proceedings against him in FIR No.1/RCT-OGL/2015 dt.12.01.2015 on the file of SHO ACB, Ongole, Prakasam District, registered against him and AO2 for the offences under Sections 7, 13(1)(d) and 12 of Prevention of Corruption Act, 1988 (for short "P.C.Act").

2) The brief facts which lead to file the instant application are thus:

a) The 2nd respondent/*defacto* complainant lodged complaint with DSP, ACB, Prakasam on 11.01.2015 with the allegations that he and his brother-in-law have lands in Santhanuthalapadu Mandal and they wanted to survey those lands and hence they filed an application to Tahsildar, Santhanuthalapadu and paid requisite fee by way of challan, the Tahsildar entrusted the survey work to AO1, who is the Surveyor. Though the complainant and his brother-in-law approached several times, AO1 did not complete the work and ultimately he demanded bribe @ Rs.1500/- per one Acre totalling Rs.21,000/- for completing the survey work and informed them that the said amount has to be paid at the time of survey and his Assistant—Siva i.e, AO2, would come and complete the survey work. On 05.01.2015, on the instructions of AO1, the AO2 went to their fields and partially conducted the survey. On his demand, brother-in-law of complainant paid Rs.5000/-. On 07.01.2015 and 09.01.2015, AO2 went along with two Assistants and completed the survey of 14 Acres of land. During the survey work, AO1 visited the lands and gave instructions to them. On 09.01.2015, when the complainant met AO1, he instructed him to meet him on 10.01.2015 at his private office situated in Santhapeta of Ongole Town and accordingly, when complainant met him, AO1 and AO2 were present in the private office of AO1. At that time AO1 returned one Rs.1000/- note as it was soiled and asked him to pay the balance amount of Rs.17,000/- on 12.01.2015 after 7:00pm at his private office. Not willing to pay him the huge bribe amount and also due to his poverty, the complainant lodged complaint.

b) The prosecution case is that the DSP after verifying the antecedents of complainant and accused registered the FIR and on 12.01.2015 at about 6:00pm, conducted pre-trap proceedings under mediator report-I in the presence of mediators and complainant and instructed the complainant to proceed to the private office of AO1 and pay the tainted bribe amount on his further demand and if he accepts, then to come out and give the signal to trap party members positioned in the vantage places outside the office. The further case of prosecution is that the complainant proceeded to the private office of AO1 and on his further demand and instructions, paid the bribe amount of Rs.17,000/- to AO2 and came out and gave the pre-arranged signal to the trap party members. They rushed to the office room of AO1 and caught hold AO1 and AO2 and conducted the post-trap proceedings.

Hence the instant application by AO1 to quash the proceedings.

3) Heard arguments of Sri B.Chandrasen Reddy, learned counsel for petitioner and Sri P.Udaya Bhaskar Rao, learned Special Public Prosecutor for ACB (AP).

4) While denying the prosecution case, the main plank of argument of learned counsel for petitioner is that the petitioner/AO1 is innocent and he was implicated in the case which is evident from the fact that the tainted amount was not recovered from his possession and the chemical test did not yield any positive result sofaras AO1 is concerned. Most importantly, the petitioner/AO1 was transferred to Capital Region Development Authority, Vijayawada and he was relieved from the office of Tahsildar, Santhanuthalapadu Mandal vide proceedings No. RC.A/27/2015 dated 08.01.2015 whereas the trap was laid on 12.01.2015 and therefore, he was no more a Mandal Surveyor in the office of Tahsildar, Santhanuthalapadu, by the date of trap and there was no occasion for him to demand and accept any bribe to do any official favour to the complainant. He thus prayed to allow the petition and quash the proceedings.

5) Per contra, learned Special Public Prosecutor for ACB (Spl.P.P) would argue that AO1 has indeed demanded bribe for doing an official favour i.e, to conduct survey to the lands of the complainant and merely

because the tainted amount was not recovered directly from AO1, that fact will not exculpate AO1 because the bribe amount was paid to AO2 only on the instructions of AO1 and further, AO2 is none other than the Assistant Surveyor. Therefore, non-recovery of bribe amount from AO1 is not a consequence to absolve him of the criminal liability. Learned Spl.P.P would point out that AO2 being the abettor of the offence, he was charged for the offences under Sections 7 r/w 12 of P.C.Act.

a) Nextly, he would argue that there is no material to show that the complainant had knowledge about the transfer of AO1 and he was relieved to the new post on 08.01.2015 itself. Therefore, it is evident that without informing the complainant about his transfer, AO1 must have demanded and accepted the bribe through AO2. Further, the survey file of complainant was very much available with AO1 at his private office even after his transfer and he produced the same before the authorities during the trap proceedings. This fact would manifest that notwithstanding his transfer, AO1 had pursued the bribe. He thus prayed to dismiss the petition.

6) The points for determination are:

1) *Whether the bribe amount shall invariably be recovered from the person, who allegedly demanded bribe to fix criminal liability on him?*

2) *"Whether there are merits in this petition to allow?"*

7) **POINT Nos.1 and 2**: As can be seen, the first contention of the petitioner/AO1 is that the tainted bribe amount was not directly recovered from him and therefore, he cannot be held guilty of the charges. This argument, it must be said, is preposterous. In a given case, the bribe amount may not be recovered by the ACB police directly from the concerned accused who demanded bribe and it may be recovered from another person. In such an instance, what is germane for consideration is whether the other person received the amount on the express or implied instructions and consent of the person who originally demanded bribe. If the answer is affirmative, the person who originally demanded bribe cannot repudiate his criminal liability on the naive argument that the bribe amount was not recovered from him. In the instant case, since inception i.e, in the complaint itself, the complainant alleged that AO1 demanded a total bribe amount of Rs.21,000/- and instructed the complainant to pay the bribe amount at the time of survey and further instructed that his Assistant-Siva (AO2) would come and conduct the survey and instructed the complainant to pay the bribe amount to AO2. As per the complaint allegations, on 05.01.2015, AO2 conducted survey partly and collected Rs.5,000/- from them. On the date of trap also, AO1 instructed the complainant to pay the amount to AO2. Ofcourse all these allegations have to be substantiated by the prosecution during the trial. However, the complaint allegations would disclose that it was only on the instructions of AO1, the bribe amount was paid by the complainant to the AO2 and as rightly pointed out by the learned

Spl.P.P, AO2 was charged under Section 12 of P.C. Act for the offence of abetment. In these circumstances, the petitioner/AO1 cannot put-forth an argument that he cannot be held guilty since the bribe amount was not recovered from him. In a decision reported in ***Virendranath v. State of Maharashtra***[1], under similar circumstances when A.1 took the plea that since the tainted money was found from A.2 and not from him his complicity shall be ruled out, the Apex Court held that the tainted money was meant to be passed on to A.1 as bribe and as the A.2 took the tainted money on the directions of A.1, it was as good as if A.1 had taken the money and passed on to A.2. The Apex Court ultimately rejected the contention of A.1.

8) The next argument is that the petitioner/AO1 was relieved on 08.01.2015 and therefore, there was no occasion for him to demand and accept bribe on 12.01.2015. This argument also does not carry any conviction. No doubt the petitioner filed a copy of the proceedings in RC.A/27/2015 dated 08.01.2015 of Tahsildar, S.N.Padu Mandal along with material papers, wherein it is mentioned that he was transferred and posted as Surveyor to Capital Region Development Authority, Vijayawada and thereby he was relieved on the forenoon of 08.01.2015 with a direction to report before Special Commissioner, Capital Region Development Authority, Vijayawada immediately. However, as rightly argued by Spl.P.P, there is no material to hold that the factum of his being relieved was known to the complainant even before the date of

[1] AIR 1996 SC 490

trap. Therefore, there is every possibility for AO1 to demand and accept bribe on 12.01.2015. Further, as per Mediator Report-II, the AO1 produced the survey file of the complainant before the trap party from his private office. It shows that though he was relieved on 08.01.2015 itself, still he kept the file of the complainant with him. Therefore, his relieving order is not a consequence at this stage.

9) So at the outset, there are no merits in this Criminal Petition and accordingly, the same is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 14.06.2018
<u>Note</u>: L.R Copy to be marked: YES / NO
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