

* SMT JUSTICE T. RAJANI

+ CRIMINAL APPEAL No.936 of 2008

% 26.12.2018

Nuthalapati Singaiah

... Petitioner

Vs.

\$ The State of AP, Rep. by its Special Public Prosecutor
Vijayawada.

... Respondent

! Counsel for the petitioners: SRI T.PRADYUMNA KUMAR REDDY

Counsel for the Respondents: STANDING COUNSEL FOR ACB & SPL
PUBLIC PROSECUTOR

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> Head Note:

? Cases referred:

1. 2014(2) ALD (Cri.) 73 (SC)
2. 2015 AIR SCW 6764



In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

CRIMINAL APPEAL No.936 of 2008

Between:

Nuthalapati Singaiah

... Petitioner

Vs.

The State of AP, Rep. by its Special Public Prosecutor
Vijayawada.

... Respondent

Date of Judgment Pronounced: 26.12.2018

Submitted for Approval:

SMT JUSTICE T. RAJANI

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| 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 Ladyship/Lordship wish to see the fair copy of the Judgment ? | Yes/ No |

T. RAJANI, J

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.936 OF 2008

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 03.07.2008, passed in C.C.No.17 of 2005, 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 simple imprisonment for a period of one year and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months for the offence under Section 7 of the Act and further sentenced to undergo SI for one year for the offence under Section 13(1)(d) of the act r/w 13(2) of the Act and also to pay a fine of Rs.1,000/-, in default to under Simple Imprisonment for three months.

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

One Pothuraju Srikanth (hereinafter referred to as, "Complainant") purchased Lakshmi Ganapathi Modern Dall Mill at Gorantla, Guntur District, in an auction conducted by Andhra Pradesh State Finance Corporation in the year 1992. Thereafter, he changed its name as Kanaka Durga Cotton Ginning Mill and is running the business. But the electrical connection was not transferred in the name of the complainant. He conducted the

business for some time and stopped the mill in the year 1998, as the business was not profitable. As the complainant failed to pay the electricity charges, the electricity department disconnected the electric meter bearing Service Connection No.38315. He intended to sell the mill and the proposed vendors expressed unwillingness due to the electricity connection not being restored and thereby, he approached the accused, who is the Assistant Engineer, APSPDCL, Guntur, for restoration of the electrical service connection to the mill and the accused informed him that he has to spend Rs.50,000/- in order to get new connection and for restoration of old electrical connection he has to pay Rs.30,000/- as bribe to him, in addition to that. Having expressed inability to pay the bribe amount, the complainant again approached the accused and on bargaining, the accused reduced the bribe amount of Rs.30,000/- to Rs.20,000/- and asked the complainant to pay Rs.10,000/- on 28.07.2003 and to pay the remaining amount after restoration of electrical connection to his mill. The complainant being unwilling to pay the bribe amount, gave a report to the District Inspector, ACB, Guntur, who in turn informed about the same to the Deputy Superintendent of Police, (DSP), ACB, Vijayawada. The DSP after causing appropriate enquiries, registered the same as a case in Crime No.29/RCT-ACB/VJA/2003 for the offence under Section 7 of the Act and took up investigation.

During the course of investigation, the DSP, secured the mediators; laid trap proceedings against the accused; recovered the tainted currency notes from the possession of the accused;

examined the witnesses and recorded their statements; arrested the accused and produced before the court seeking for remand and after concluding the investigation, filed charge sheet.

3. The trial court took the case on file and after complying with all the legal formalities, framed charges against the accused for the offences 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 7 were examined and Exs.P1 to P15, 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 the evidence and on his behalf, DW.1 was examined, but no documentary evidence was adduced. Ex.X1 was marked through witnesses.

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 has not appreciated the legal and factual aspects of the case, before coming to the conclusion. The trial court erred in holding that the appellant is guilty under Sections 7, 13(1)(d) r/w 13(2) of the Act. The trial court ought to have rejected the evidence of PW1, who is the *de facto* complainant and who turned hostile to the prosecution and failed to examine LWs.4, 5, 6 and 7 and ought to have acquitted the

appellant. The trial court failed to appreciate that there was abnormal delay in registering the FIR and its reaching to the court. The trial court ought to have seen that except PW1, all other witnesses are official witnesses and there is no independent evidence to support the case of the prosecution. The trial court ought to have seen that the sanction is not a valid sanction order and suffers from legal proof of sanctioning authority. The trial court failed to appreciate the allegation in Ex.P1 and demanding of any bribe from PW1 and his antecedents and motive for giving complaint and laying trap by PW6. The trial court ought to have rejected the evidence of PWs.1 to 7 and ought to have acquitted the appellant. The trial court ought to have rejected the pre trap proceedings as illegal and not conducted in legal manner and the court below failed to see that there is no evidence to draw the presumption under Section 114 of the Evidence Act. PW3, who acted as Panchayatdar also gave a complete go by to the prosecution case. The trial court failed to see that the sketch map Ex.P11 and the version of PW6, did not support the case of the prosecution.

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

7. The counsel for the appellant submits that the prosecution absolutely failed to prove the demand made by the complainant, as the complainant, who was examined as PW1, did not support the case of the prosecution. He further submits that even in the

statement recorded under Section 164 CrPC before the Magistrate, the complainant did not speak about any demand.

8. The Public Prosecutor, on the other hand, submits that since the chemical test proved positive, acceptance stands proved and hence, the presumption under Section 20 of the Act can be invoked for arriving at the guilt of the accused.

9. Based on the above arguments and the material on record, the following points are framed for consideration:

1. Whether the chemical test turning positive would give rise to presumption under Section 20 of the Act.
2. Whether the judgment of the court below is sustainable.
3. To what result.

POINT Nos.1 and 2: -

10. The court below by considering the fact that the chemical test proved positive, invoked the presumption adumbrated under Section 20 of the Act and placed burden on the accused. Holding that the onus laid on the accused is not discharged, the court arrived at the guilt of the accused. The law is well settled that if acceptance is proved, the same would allow the courts to invoke a presumption under Section 20 of the Act.

11. In support of the same, it is relevant to refer to the ruling reported in *B.Jayaraj v. State of Andhra Pradesh*¹, which was rendered by three judges of the Supreme Court, wherein it was also held, that for a presumption under Section 20 to be drawn,

¹ 2014(2) ALD (CrL.) 73 (SC)

precondition is that gratification should be received for doing or not doing official act and it cannot be raised in the absence of proof of acceptance. It held that proof of acceptance of gratification is an essential pre-condition for raising a presumption under Section 20.

Hence, from the above ruling, it can be understood that the presumption under Section 20 can be invoked on the proof of acceptance of gratification and since the presumption is rebuttable, the burden would lie on the accused to prove otherwise.

12. The ruling relied upon by the counsel for the appellant reported in *N.Sunkanna v. State of Andhra Pradesh*², is a case in which the complainant himself had disowned his complaint and turned hostile. The Supreme Court observed that there is no other evidence to prove that the accused had made any demand and without proof of demand, the same would not constitute the offence under Section 7. It was further held that unless there is proof of demand of illegal gratification, proof of acceptance will not follow, legal presumption under Section 20 hence cannot be drawn.

13. In the light of the above rulings, the evidence of the witnesses has to be evaluated with close circumspection and strict scrutiny. PW1, while deposing before the court, states that he purchased a dall mill in Gorantla village and the same was

²

2015 AIR SCW 6764

auctioned by the AP State Finance Corporation. He converted the same into Cotton Mill. Though he purchased it, he was paying the electricity bills in the name of old mill itself, without asking for conversion. After that, he stopped the mill, as it was not running in profits. He did not pay the electricity bills for the said years. The bill was pending. The department disconnected the electricity connection. Then he put the mill for sale. As the electricity metre was removed from the mill, no body came forward to purchase his mill. Hence, he applied for re-connection of his metre, to the Electricity Department, on 17.07.2003 and handed over the application to the Assistant Engineer Singaiah. PW1 further deposed that the accused told him that he would verify the matter and again he met the accused on 19.07.2003. The accused told that he would look into the matter as only two days elapsed since he gave the application and except that there was no other conversation that took place between them. He further deposed that again he went to the office of the accused on 22.07.2003 and 24.07.2003. The accused was not available on both the days. Again he went to the office on 26.07.2003. When he enquired, the accused told that he sent the file for processing and he has to wait for some time and except that no other conversation took place. But, however, he states that he gave a report to the ACB officers in his own hand writing. He thereafter spoke about the trap. With regard to the trap, he deposed that after going to the spot he got down and no further instructions were given to them. He went inside of the Electricity office and the accused was not present there. He enquired with

the lineman, who informed that the accused would come one or two hours later. He informed the same to the DSP, then the DSP instructed him to remain in the office till the arrival of the accused. Then the accused came to the office at 06:00 PM or 06:30 PM. At that time, the accused was talking with some body. Then he went to him, at that time also the persons who are talking with the accused were present. He enquired with the accused regarding his file, then he told him that it would take two days more. Then he gave the amount to the accused and the accused did not take the said amount and pushed it with his both hands. Then he kept the said amount on the table and returned back. He further deposed that he kept the amount in the drawer of the table of the accused and came back and relayed signals to the ACB Officials. At this stage, PW1 was declared as hostile.

In the cross-examination done on behalf of the accused, he admitted that when he offered the amount of Rs.10,000/- to the accused, he questioned him why he was giving the amount to him, as he never asked for it and pushed the amount with his both hands and after the amount fell on the ground and he himself took it and kept in the drawer of the accused.

14. PW2, who is the Assistant Divisional Engineer, Town-II, Guntur, in APSPDCL, deposed that he knows the accused. His evidence is that the accused met him on 23.07.2003 and enquired him about the issuance of reconnection of service of PW1. Then he asked him to send the final reading and the

representation of the consumer to him. He received the same on the same day evening. He found only a final reading in the letter submitted by the Assistant Engineer. Then he asked the Assistant Engineer i.e., the accused, to furnish the date on which the metre was disconnected and also change slip. He told the said fact on 23.07.2003. He received it on 26.07.2003, along with particulars. Then he gave instructions to his office to put office note and forward the same to the Divisional Engineer. On 27.07.2003, he verified the proposal and submitted the proposal to the Divisional Engineer. The proposal received by him from the accused was on 23.07.2003. He was not declared hostile. Hence, his evidence can be accepted in toto and it does not anywhere spell about any delay caused by the accused.

13. PW3, who is the senior accountant in the office of Deputy Director, District Treasury Office, Guntur, deposed that he acted as mediator for the trap proceedings. According to his evidence, when they trapped the accused and conducted chemical test, his hands turned pink, which indicated that the test was positive. Then the DSP enquired with the accused about the tainted amount and then he opened the table drawer and showed the amount. The version of the accused was reduced into writing, wherein he stated that PW1 kept the amount on his table.

14. Hence, even if the evidence of PW3 is taken into consideration, it supports the version of PW1 that he kept the amount on the table, without there being any demand by the accused. PW3 does not state that the accused made any

confession that he made demand and then PW1 kept the amount on the table. Hence, the evidence brought forth before the court does not suffice to prove the demand allegedly made by the accused from PW1.

15. DW1, who was examined on behalf of the accused, deposed that he was working in APSPDCL, Guntur, as Assistant Engineer. He went to the office on 28.07.2003. He was in the office along with the accused and others. Then PW1 came and enquired the accused about the service connection and the accused told that the file regarding reconnection of service was sent to ADE office on 27.03.2006 and the accused asked him to show the said entry in Dispatch register to PW1. As such, he showed the said entry to PW1. Then PW1 thanked and tried to give the amount to the accused and the accused refused to take the amount and pushed the said amount with his both hands and the said amount fell on the table of accused. The accused told him to take away the said amount, but PW1 did not hear the words of the accused and kept the amount in the drawer of the table of the accused, which was kept open at that time and went away.

16. Whether the evidence of DW1 is trustworthy or not, is of no consequence, as the other evidence, as already concluded, does not suffice to prove the demand.

17. The counsel for the appellant relies on the judgment of the Supreme Court reported in *P.Satyanarayana Murthy vs. State*

of *A.P.*³, which was rendered by the three judges of the Supreme Court, wherein it was held that the proof of demand of illegal gratification is a gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) and in the absence thereof, the charge thereof would fail. It also held that mere acceptance of any amount allegedly by way of illegal gratification, recovered thereof, dehors the proof of demand, *ipso facto*, would thus not be sufficient to bring home the charge under these two sections of the Act and as a corollary, the failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entitle his conviction thereunder.

18. 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 hence, the judgment of the court below is not sustainable.

19. Accordingly, points 1 and 2 are answered.

POINT No.3: -

20. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant in Judgment, dated 03.07.2008, passed in C.C.No.17 of 2005, by the Court of Special Judge for SPE & ACB Cases, Vijayawada, Consequently, the appellant is acquitted of the charge leveled

³ (2015) 10 SCC 152

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.

T. RAJANI, J

December 26, 2018
LMV

