

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL Nos.661 AND 667 OF 2006

COMMON JUDGMENT:

Criminal Appeal No.661 of 2006 is filed by Accused Officer No.1, while Criminal Appeal No.667 of 2006 is filed by Accused Officer No.2 in Calendar Case No.2 of 2001 on the file of the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. The appellants preferred the said appeals challenging the conviction and sentences imposed upon them by the trial Court vide judgment, dated 18.05.2006 in C.C. No.2 of 2001.

3. Vide the aforesaid judgment, the trial Court sentenced both the Accused Officers to undergo rigorous imprisonment for a period of two years, to pay a fine of Rs.2,000/- (Rupees two thousand only) and in default to undergo simple imprisonment for a period of six (06) months each for the offence under Section 7 of the Prevention of Corruption Act, 1988 and also for the offence under Section 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). The trial Court further ordered to run both the sentences of imprisonment concurrently.

4. Assailing the said judgment, the appellants herein preferred the above said appeals.

5. It is relevant to note that during pendency of the present appeals, the appellants herein died and, therefore their respective legal heirs were brought on record.

6. Since both appeals arise out of a common judgment passed by the trial Court in C.C. No.2 of 2001, both the appeals are disposed of by a common judgment.

7. The factual matrix that led to filing of the present appeals is as follows:

i) Accused Officer No.1 - Adimalla Yadagiri was Assistant Commercial Tax Officer (Intelligence) and Accused Officer No.2 - Nookala Upender Reddy was Senior Assistant in the Office of the Commercial Tax Officer, Nalgonda at the relevant point of time.

ii) PW.1 was proprietor of M/s. Hari Enterprises, a furniture shop. He had obtained license under APGST. On 10.11.1999, Accused Officers inspected the shop of PW.1, verified the stock and asked him to bring bills and records pertaining to the stock to the office of CTO, Nalgonda on the next day i.e., 11.11.1999.

iii) Accordingly, PW.1 produced the bills and records to the Accused Officers. Thereafter, both the Accused Officers directed PW.1 to come to the office of CTO on the next day i.e., 12.11.1999. Obeying the said instructions, PW.1 attended the office of CTO along with records as sought by them. After verifying the records, both the Accused Officers asked PW.1 to come on Monday i.e., 15.11.1999.

iv) Accordingly, PW.1 went to the office of the Accused Officers wherein he was instructed to pay the tax dues pertaining to the previous year assessed by ACTO to a tune of Rs.7328/-. Then, PW.1 cleared the said dues. Thereafter, both the Accused Officers demanded an amount of

Rs.4,000/- as bribe from PW.1 for not writing any irregularities in the stock position of his shop that was found during their inspection on 10.11.1999 and threatened him with dire-consequences that they would make out a case against him if the demanded amount is not paid.

v) Since PW.1 was not interested to meet the said demand of Rs.4,000/- towards bribe, approached the ACB Officials on 16.11.1999 by lodging Ex.P1 complaint. Thereafter, PW.6, DSP, ACB, Hyderabad Range, laid trap by following the procedural aspects including conducting pre-trap and post trap proceedings in the presence of mediators.

vi) After completion of investigation, the ACB Officials laid a charge sheet and the same was taken on file vide C.C. No.2 of 2001.

8. The trial Court framed charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act. On examination, both the Accused Officers denied the said charges and prayed for trial and accordingly the trial Court conducted the trial.

9. During trial, the prosecution examined seven witnesses i.e., PWs.1 to 7 and marked Exs.P1 to P16 and MOs.1 to 12 were exhibited. Both the Accused Officers neither adduced oral evidence nor produced documentary evidence to disprove the prosecution case.

10. After completion of the trial, and on consideration of evidence, both oral and documentary, the trial Court found both the Accused Officers guilty of the aforesaid charges and accordingly convicted them vide the aforesaid judgment, dated 18.05.2006 in C.C. No.2 of 2001 and sentenced them in the manner stated supra.

11. Feeling aggrieved by the said judgment, both the Accused Officers preferred the above said two appeals. As already stated above, during pendency of the appeals, both the Accused Officers died and their respective legal heirs were brought on record.

12. Heard Mr. V. Ramesh Reddy, learned counsel for the appellant - Accused Officer No.1 in Crl.A. No.661 of 2006, Mr. C. Sharan Reddy, learned counsel representing Mr. A. Hariprasad Reddy, learned counsel for the appellant - Accused Officer No.2 in Crl.A. No.667 of 2006, and Mr. T. L. Nayan Kumar, learned Additional Standing Counsel - cum - Special Public Prosecutor for ACB Cases for the State of Telangana appearing on behalf of the respondent.

13. The learned counsel for the appellants in both the appeals, would contend that there was no official favour that was pending with the Accused Officers and prosecution failed to prove that they were capable of doing such official favour to PW.1 at the relevant point of time. According to them, Accused Officer No.1 was the Assistant Commercial Tax Officer and Accused Officer No.2 was the Senior Assistant and that they did not have any power to do any favour much less the official favour to PW.1 at the relevant point of time.

i) The learned counsel would further contend that the prosecution miserably failed to prove the twin requirements of demand and acceptance of illegal gratification to do an official favour to PW.1 beyond reasonable doubt with cogent evidence. It is also their contention that the prosecution has to prove the said twin requirements of demand and acceptance and proving one alone is not sufficient and that mere recovery of tainted money

is not sufficient to record conviction. In the present case, since the prosecution utterly failed to prove the demand of bribe, the question of acceptance of the same by the Accused officers does not arise.

ii) They also contend that since the Accused Officers did not commit any irregularities, the ACB Officials did not seize any records from Accused Officers and that the ACB Officials also failed to prove the very demand by the Accused Officers from PW.1 on 15.11.1999. According to them, PW.1 has cleared the tax dues of Rs.7328/- in respect of previous year on 15.11.1999 itself and, therefore, the question of demanding Rs.4000/- does not arise. The allegation of demanding Rs.4000/- by the Accused Officers from PW.1 for not writing any irregularities in the stock position that was found during their inspection on 10.11.1999 was not within their purview and it is the CTO, Nalgonda, who has to do so. According to the Accused Officers, it was not their duty and that they would only follow the instructions of the CTO. They were not in a position to do any official favour to PW.1.

iii) It is also their contention that the prosecution failed to establish the conspiracy between Accused Officer No.1 and Accused Officer No.2 and that PW.1 implicated both the Accused Officers in a false case in connivance with the ACB Officials. Though it was mentioned in post-trap proceedings about the presence of third person i.e., Mr. Sravan Kumar, Junior Assistant, prosecution did not examine him and the same is fatal to the case of prosecution.

iv) In support of the aforesaid contentions, the learned counsel referred various contradictions and admissions in the depositions of the

prosecution witnesses, and by referring the same, the learned counsel vehemently contended that the prosecution did not examine any independent witness and that the ACB Officials did not conduct any discreet enquiry, and thereby the prosecution miserably failed to prove both the twin requirements of demand and acceptance. Even then, the trial Court convicted the Accused Officers without giving specific findings with regard to proving of demand and acceptance. The trial Court recorded the conviction only on assumptions and presumptions and, therefore, the judgment, which is impugned in these appeals, is liable to be set aside. With the aforesaid contentions, the learned counsel in both the appeals prayed for allowing the appeals.

14. On the other hand, the learned Special Public Prosecutor supporting the impugned judgment would contend that there was an official favour pending with the Accused Officers i.e., not writing/not mentioning any irregularities in the stock position that was found during their inspection on 10.11.1999 in the shop belongs to PW.1. He would also contend that it is the case of prosecution that the Accused Officers conducted an inspection of PW.1's shop on 10.11.1999 and the inspection report was pending with them and for the said purpose, the Accused Officers demanded an amount of Rs.4000/- as illegal gratification from PW.1 for doing official favour of not mentioning any irregularities in the stock position that was found during their inspection on 10.11.1999. He further contended that PW.1 lodged Ex.P1 complaint with the ACB Officials specifically mentioning about the demand of bribe by the Accused Officers and after completing the procedure, the ACB Officials laid the trap on 17.11.999. During trap, the

ACB Officials recovered the tainted amount of Rs.4000/- from the Accused Officers.

i) The learned Special Public Prosecutor would further contend that the Accused Officers did not give any spot explanation on the day of trap as per Ex.P5-post trap proceedings and that Ex.P10- file was pending with the Accused Officers. Both the Accused Officers obtained blank signed letter-heads of M/s. Hari Enterprises from PW.1. The conduct of the Accused Officers during trap and also recovery of tainted amount from them prove the demand and acceptance of bribe amount. It is also their further contention that nothing contra was elicited from the prosecution witnesses. Once demand, acceptance and recovery of tainted amount are proved, presumption under Section 20 of the Act can be drawn. In the present case, according to the learned Special Public Prosecutor, since the twin requirements were proved, the trial Court by drawing the said presumption, recorded conviction and imposed the sentences on them. Therefore, there is no error in the impugned judgment.

ii) In support of the aforesaid contentions, the learned Special Public Prosecutor relied on the principles held in 1) **B. Vittalaiah v. State of Andhra Pradesh**¹, 2) **K.P. Pullaiah v. State of A.P.**², 3) **D. Velayutham v. State**³, 4) **Madhukar Bhaskararao Joshi v. State of Maharashtra**⁴, 5) **State of A.P. v. K. Punardana Rao**⁵, 6) **C.M. Sharma v. State of A.P.**⁶, 7) **Chaturdas Bhagwandas Patel v. The State of Gujarat**⁷, 8) **Ramesh**

¹. 2015 (2) ALD (Crl.) 776

². 2005 (2) ALD (Crl.) 586 (AP)

³. 2015 (2) ALD (Crl.) 586 (SC)

⁴. 2001 CrL.L.J. 175

⁵. 2004 CrL.L.J. 4191

⁶. 2011 CrL.L.J. 975

⁷. AIR 1976 SC 1497

Kumar Gupta v. State of M.P.⁸ and 9) **Prakash Shankarrao Kamble v. State of Maharashtra**⁹ and prayed for dismissal of the appeals:

15. In view of the above rival contentions, the following points that arise for consideration:

- i) Whether there was any official favour that was pending with the Accused Officers as on 15.11.1999 and 17.11.1999?
- ii) Whether the prosecution could prove the guilt of the Accused Officers under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988?
- iii) Whether the judgment of the trial Court is sustainable factually and legally?

POINT Nos. (i) to (iii):

16. It is the specific contention of the prosecution that Accused Officer No.1 was Assistant Commercial Tax Officer and Accused Officer No.2 was Senior Assistant in the office of the Commercial Tax Officer, Nalgonda at the relevant time. They inspected the shop of PW.1 i.e., M/s. Hari Enterprises, a furniture shop, near Natraj Talkies, Nalgonda Town. During the inspection, the Accused Officers collected signed blank letter-heads of M/s. Hari Enterprises from PW.1. After inspection, they requested PW.1 to produce the bills etc. on 11.11.1999 and accordingly PW.1 produced the same. On verification of the same, both the Accused Officers requested PW.1 to come to CTO Office on the next day i.e.. 12.11.1999 and accordingly PW.1 went to the office along with records. Thereupon, both the Accused Officers requested PW.1 to come to the office on 15.11.1999. Accordingly, PW.1 went to the office of the Accused Officers on

⁸. 1995 CrI.L.J. 3656

⁹. 2000 CrI.L.J. 2110

15.11.1999, where he was asked to pay an amount of Rs.7328/- towards tax dues of the previous year and accordingly PW.1 has cleared the said dues. According to PW.1, the Accused Officers informed him that there were some irregularities in the stock position that was found during their inspection on 10.11.1999 and for not writing such irregularities, the Accused Officers demanded an amount of Rs.4000/- from PW.1 and threatened him with dire consequences that in case their demand is not fulfilled, they would book a case against him. According to the learned Special Public Prosecutor, since PW.1 was not interested in paying the said amount to the Accused Officers, he lodged Ex.P1 complaint with DSP, ACB, on 16.11.1999 who in turn conducted discreet enquiry into the said allegations and after satisfying himself only, PW.6 registered a case by issuing Ex.P16 - FIR. Thereafter, PW.6 laid a trap on 17.11.1999 against the Accused Officers after following procedure including conducting pre-trap and post-trap proceedings and also recovered the tainted amount from the Accused Officers.

17. PW.1, the *de facto* complainant, specifically deposed about the demand of Rs.4,000/- by the Accused Officers from him; obtaining his signatures on two blank papers stating that they would return the same to him after his paying the bribe amount. On the date of trap, on seeing him, both the Accused Officers enquired whether he brought the demanded amount and the letter-heads of his shop and asked him to hand over the said amount and letter-heads papers immediately since they have to go for inspection. Thereafter he took out the tainted amount and handed over the same to Accused Officer No.1, who, in turn, requested him to give the same to Accused Officer No.2. Accordingly he gave the said amount to Accused

Officer No.2, who received it with his hands and counted the said notes. On asking Accused Officer No.1, he gave letter-head papers to Accused Officer No.2 and after receipt of those papers and on stating by Accused Officer No.1, Accused Officer No.2 returned the two blank papers with his signatures to him for inspection.

18. It is further contended by the learned Special Public Prosecutor that on giving pre-arranged signal, the ACB Officials including PW.6 entered the office of CTO. On seeing them, Accused Officer No.1 briskly walked away from the portico of the building towards rear side, he was accosted by the ACB Inspectors. In the meanwhile, Accused Officer No.1, who was found getting his room locked, was also taken to the rear side of the building where Accused Officer No.2 was stopped while attempting to scale over the rear side of the compound wall. But, Accused Officer No.2 could not scale over the compound wall as it was seven feet height, however, took out some currency notes and threw over the compound wall. After conducting chemical tests, the ACB Officials secured the presence of Mr. K. Bajaranga Prasad (PW.4), a Photographer, got photographed the currency notes throw over the compound wall by Accused Officer No.2 and then recovered the said amount.

19. PW.2, one of the mediators who accompanied PW.1 on the day of trap, also deposed about the entire trap proceedings including recovery of tainted amount in the manner stated above. PW.3, Commercial Tax Officer, Nalgonda, at the relevant point of time, also specifically deposed about the procedure to be followed for conducting inspection and registering a case in the event of any irregularities by any dealer. He also deposed about the

instructions given to the Accused Officers for collecting tax dues. PW.4, a Photographer, deposed about taking of photographs of the tainted money on the instructions of ACB Officials. PW.5 deposed about sanction of prosecution. PW.6, DSP, ACB - cum - Trap Laying Officer, deposed about the receipt of Ex.P1-complaint from PW.1, making discreet enquiries about the genuineness of complaint lodged by PW.1 and laying trap. He also further deposed about the trap proceedings and recovery of tainted currency notes. PW.7, Inspector of Police, ACB, deposed about recording of statements of complainant under Section 164 of Cr.P.C. and recording of statements of other witnesses and filing of charge sheet in the Court concerned.

20. According to the learned Special Public Prosecutor, the Accused Officers did not elicit anything contrary to the evidence from PW.1 to disprove the twin requirements of demand and acceptance of bribe. There was no spot explanation that was given by the Accused Officers and the conduct of the Accused Officers at the time of trap would prove the demand and acceptance of illegal gratification beyond reasonable doubt. According to him, on the day of trap, on seeing the ACB Officials, Accused Officer No.2 briskly walked away from the portico of the building towards rear side of the building and Accused Officer No.1 was found getting his room locked. Accused Officer No.2 made an attempt to scale over the compound wall but he could not succeed since the height of the compound wall was seven feet. Then he took out the currency notes and threw away over the compound wall, and the same were secured by the ACB Officials. By referring the said depositions, the learned Special Public Prosecutor would contend that the Accused Officers demanded the said amount of Rs.4,000/-

and accepted the same on 17.11.1999, and for the said reason, Accused Officer No.2 tried to escape from the ACB Officials by making an attempt to scale the compound wall and Accused Officer No.1 tried to escape from the ACB Officials by getting his room locked, but they failed in their attempts. So, by the said conduct of the Accused Officers, it is clear about their guilty and, therefore, the prosecution could prove the case beyond reasonable doubt.

21. It is the further contention of the learned Special Public Prosecutor that the prosecution has proved the inspection of PW.1's shop by the Accused Officers on 10.11.1999 and further events from 11.11.1999 to 17.11.1999. The Accused Officers did not elicit anything contra from the prosecution witnesses.

22. PW.3, CTO, Nalgonda, deposed as per G.O.Ms.No.132, dated 15.2.1989, CTO and the Officer above the cadre of CTO can inspect the business premises of the dealers and as well search. The CTO is authorized to inspect any business premises irrespective of the turnover. There was no such routine inspection by anybody. Below CTO, no official has inspection powers suo motu M/s. Hari Enterprises is under the jurisdiction of CTO, Nalgonda and the said business premises was inspected by A.C. Intelligence, Nalgonda and the said business concern has to pay an amount of Rs.7,300/-. He had instructed the Accused Officer No.1 to collect the said amount of Rs.7300/- from M/s. Hari Enterprises and he has not given any specific instruction on 10.11.1999 to inspect M/s. Hari Enterprises by Accused Officers. He was not aware of Accused Officers conducting any inspection of M/s. Hari Enterprises and they have not informed him about the said

inspection. He further deposed that he was present in the office on 17.11.1999. On enquiry, he informed the ACB Officials that he has not authorized the Accused Officers to conduct inspection of M/s. Hari Enterprises on 10.11.1999. On the request of Pw.6, he produced the file relating to the said firm and he also handed over the Attendance Register and other files. Ex.P9 is the assessment file relating to the said firm and Ex.P10 is the inspection file of the said firm. During cross-examination, he categorically admitted that as per Ex.P10 file, he was present during inspection conducted on 10.11.1999 at the firm of PW.1. During inspection, they prepare an inventory of articles available in the shop and verify the invoices of the purchase by the dealer and irregularities etc. He also further admitted that they would take inventory on a white-paper and ask the party to produce letter-heads if they have.

23. PW.6, DSP, ACB, during cross-examination, categorically admitted that there is no hard and fast rule or practice about making an endorsement on the complaint with regard to the discreet enquiries conducted by ACB Officials; that invariably, he conducted the discreet enquiry whenever he receives complaint. As per Ex.P1, no demand was made on 10th, 11th and 12th of November, 1999. PW.1 was asked to produce the letter-head papers of his shop and payment of compound fee. He has further admitted that the reference to the blank letter head papers of PW.1 was made for the first time in Ex.P4-pre-trap proceedings. He further admitted that there is no mention in Ex.P5-post trap proceedings with regard to the details of third person through whom Accused Officer No.1 was getting his office room locked. There is no mention in Ex.P5 that he examined Mr. Sravan Kumar, Junior Assistant (LW.5). Mr. Mora

Chandraiah (LW.4), Attender, informed them that the Accused Officers and Junior Assistant Mr. Sravan Kumar were preparing to go on a camp for inspection. He further admitted that during trap proceedings, Ex.P3 blank white papers were returned by Accused Officers to PW.1 which they have seized from him there itself.

24. It is settled proposition of law that, this Court being an Appellate Court is having powers under Section 374 of Cr.P.C. to reappraise the whole evidence. As discussed supra, depositions of PWs.1, 2, 3, 4 and 6 categorically establish the fact of pendency of official favour i.e., not mentioning of any irregularities in the stock position that was found in the establishment of PW.1 during inspection by the Accused Officers on 10.11.1999 with the Accused Officers. The same also establishes the demand and acceptance of the said amount of Rs.4000/- towards illegal gratification to do the said official favour and recovery of tainted currency notes. Nothing contra was elicited by the Accused Officers from the said prosecution witnesses. Conducting inspection by the Accused Officers at PW.1's shop on 10.11.1999 and subsequent events of PW.1 meeting the Accused Officers from 11.11.1999 to 15.11.1999 are all not in dispute. The defence failed to disprove the said facts. The defence also did not elicit anything to disprove the demand and acceptance of bribe by the Accused Officers from PW.1 towards illegal gratification. Whether the Accused Officers conducted inspection of PW.1 shop with authorization or without authorization and whether it is legal or illegal is altogether a different aspect. In fact, PW.3, CTO, himself admitted during cross-examination that as per Ex.P10 file, he was present during inspection of PW.1 shop by the Accused Officers on 10.11.1999, preparation of inventory of articles available in the

shop, verification of records for the purpose of irregularities and evasion of tax etc. PW.3 also admitted that they would make inventory on white papers etc. During chief-examination, he deposed that he instructed Accused Officer No.1 to collect tax of Rs.7,300/- from M/s. Hari Enterprises belongs to PW.1. Of course, he denied that he has not given any specific instructions on 10.11.1999 to inspect the shop of PW.1 by the Accused Officers and that he was unaware of the Accused Officers conducting inspection on the firm of PW.1, but the same would not tilt the case of prosecution in view of contents of Ex.P10 file as it discloses his presence on the date of inspection by the Accused Officers.

25. More over, the conduct of the Accused Officers at the time of trap i.e., 17.11.1999 plays a vital significance in proving the prosecution case. On relaying pre-arranged signal, Accused Officer No.2 walked away briskly from the portico of the building towards rear side and tried to escape from the office by jumping over the compound wall, but could not succeed due to height of the compound wall, however, he could throw the money over the compound wall, whereas Accused Officer No.1 tried to get his room locked. So, the said conduct of the Accused Officers would clearly establish their motive in demand and acceptance of bribe from PW.1. Admittedly, tainted currency notes of Rs.4,000/- were recovered. Thus, the prosecution could prove the twin requirements of demand and acceptance of illegal gratification by the Accused Officers from PW.1 to do the aforesaid official favour, beyond reasonable doubt with cogent evidence.

26. As discussed above, the defence did not elicit anything contra to the same from the prosecution witnesses. It is also relevant to note that there

was no spot explanation given by the Accused Officers and nothing was recorded in Ex.P5-post trap proceedings.

27. The trial Court on consideration of evidence, both oral and documentary and also by drawing presumption under Section 20 of the Act, gave a specific finding that the Accused Officers being public servants by abusing their position obtained Rs.4,000/- by corrupt or illegal means and, therefore, prosecution has proved the guilt of the Accused Officers beyond reasonable doubt. There is also specific finding by the trial Court that the Accused Officers obtained gratification other than legal remuneration to do the said official favour and since prosecution could prove the trap and recovery of tainted amount, a presumption under Section 20 of the Act was drawn by it.

28. As discussed above, the depositions of PWs.1, 2, 3, 6 and 7 coupled with Exs.P1, P2, P3, P4, P5, P6 and P10, the prosecution could prove the twin requirements of demand and acceptance of bribe by the Accused Officers from PW.1 and also pendency of official favour at the relevant time and that the defence failed to disprove the same. Thus, there is no error in the impugned judgment warranting interference by this Court.

29. In view of the aforesaid discussion, both the Criminal Appeal Nos.661 and 667 of 2006 filed by the Appellants - Accused Officers are dismissed, confirming the judgment, dated 18.05.2006, passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in C.C. No.2 of 2001.

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

15th November, 2019
Mgr

JUSTICE K. LAKSHMAN

