IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.11.2019
Pronounced on : 09.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.398 of 2009

State by C.B.I.,
Additional Superintendent of Police,
C.B.I SPE/CBE/ACB/Chennai.
R.C.No.44(A) 2003. ... Appellant

Vs.

Sarat Kumar Dash ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal of the respondent in C.C.No.9 of 2005 dated 30.03.2009 on the file of the II Additional District Judge for CBI Cases, Coimbatore and dispose the appeal in accordance with law.

For Appellant : Mr.K.Srinivasan
Special PP for CBI Cases

For Respondent : Mr.R.Rajarathinam for
Mr.J.Radhakrishnan

JUDGMENT

This Criminal Appeal is preferred by the State against the Judgment of acquittal in C.C.No.9 of 2005, dated 30.03.2009 rendered by the learned II Additional District Judge, Special Court (CBI Cases), Coimbatore.

2.The respondent/sole accused was charged for the offence under Sections 13(2) r/w 13(1)(b) of the Prevention of Corruption Act, 1988. On conclusion of the trial by examination of witnesses and documents, the learned trial Judge found the respondent not guilty of the offence under Sections 13(2) r/w 13 (1)(b) of the Prevention of Corruption Act, 1988 and acquitted the respondent, against which the present appeal.

3.The case of the prosecution is as follows:-
(i)The respondent, Sarath Kumar Dash is a public servant,

viz., Joint/Additional Commissioner of Income Tax, Salem Range during the period from October 2001 to July 2002, committed criminal misconduct by habitually accepting valuable things namely donations totalling Rs.4,50,005/-, without consideration of Utukal Mani Palli Unnayana (UPUS) trust, Cuttack. The said trust was formed on 05.10.2001. The father of the respondent was its President. The respondent received donations from the assessees and Chartered Accountant in the name of UPUS trust. The trust was formed on 05.10.2001 by executing a trust deed by Smt.Jashawini Patnaik and the other trustees were Dr.Manoj Kumar Bhuyan and Dr.Smt.Soundamini Das. The respondent's father, Anantha Prasad Dash, operated savings bank account No.9721 for the trust with CCCB limited, Cuttack (Cuttack Central Co-operative Bank Limited). By resolution of the Board of Trustees dated 05.10.2001, Anantha Prasad Dash/respondent's father was authorized to open and operate the account in the capacity as President of the trust. The said Anand Prasad Dash operated the bank account till 02.02.2003 and was relieved from the position on 02.02.2003 on his request due to ill-health. UPUS trust received 51 donations amounting to Rs.8,75,005/- by way of demand draft from donors from and around Salem which were cleared and credited into the account of the trust during the period from 05.11.2001 to 09.07.2002. The major credits were made by way of demand draft only. Apart from this amount, UPUS Trust received Rs.24,955/-, as donations from the local people in cash during the said period. UPUS Trust spent an amount of Rs.1,15,000/- for charities and made two fixed deposits for a total amount of Rs.7.5 lakhs in the name of trust.

(ii)The respondent obtained 27 donations from the persons with whom he was having official connection. PW62, the Investigating Officer, registered the complaint and examined donors, who have stated about taking demand draft in the name of trust at the request of the respondent and handing over the demand draft, some of the demand draft were taken from Canara Bank, Azhagapuram Branch, which was spoken by PW6 and PW7. PW9 to PW26 are the Income Tax Officers and Commissioners of Income Tax, who have stated about the donors being Assessees of Income Tax department, who were either under scrutiny or had obtained exemptions under Section 80(G) of the Income Tax Act. PW27 to PW30 and PW58 are the Assistant Managers and Managers of CCCB Limited, Cuttack, who have stated about opening of the bank account in the name of trust, handling of the trust amount by the respondent's father and the donations received by demand draft being credited to the account of the trust. PW2 to PW5 and PW32 to PW57 are the Assessees and Chartered Accounts. PW59 to PW61 are the Inspectors of CBI, who aided the investigation of PW62, the Investigating Officer. On collection of the statement and documents and after obtaining sanction for prosecution, charge sheet came to be filed before the trial Court.

4.Before trial Court, prosecution examined 62 witnesses and marked 209 exhibits. On the side of the defence, no witnesses were examined and marked any documents.

5.The contention of the learned Special Public Prosecutor appearing for the appellant/state is that the trial Court failed to consider the oral evidence and also the documentary evidence let-in by the prosecution to substantiate the case. The trial Court failed to accept the evidence of three witnesses namely PW32, PW41 and PW52, who specifically deposed about the respondent asked them to give donation for a trust in Orissa in which, his father was the President. PW 32, specifically stated that the demand draft in favour of the trust was personally handed over to the respondent. It is proved by the prosecution that the respondent's father, Anand Prasad Dash, was the President of the Trust and he was authorized to operate the bank accounts of the trust, the account opening form is as Ex.P81 and the certified copy of the resolution of the trust is marked as Ex.P82. The withdrawal slips are signed by the father of the respondent.

6.The majority of the donors namely the Assessees and Chartered Accounts have not supported the case of the prosecution, the trial Court failed to look into the fact that documentary evidence proved that the Assessees from Salem gave demand draft to trust at Cuttack. But for the respondent, they would not have made any donation to a trust at Cuttack. The Assesses were having official dealing with the Income Tax Department, the respondent the Additional Commissioner of Income Tax, Salem, intermediate officer between Assessing Officer and the Commissioner in processing the files and claims of the Assesses. Further, the bank officials of CCCB Limited, Cuttack, had clearly spoken about the donations of donors, being credited in the account of the respondent's father, who withdrew some amount in cash and the trust placing the balance amount as fixed deposit.

7.The learned Special Public Prosecutor further submitted that Exs.P83, P86, P87 & P90, are the self cheques of the trust which had been withdrawn by the respondent's father. Further from Ex.P208, the receipts and payments of the trust are proved. As per Section 13(1) (b) of the Prevention of Corruption Act, the presumption under Section 20 comes into play which has not been dislodged by the respondent. Further, there is no dispute as to the respondent dealing with the file of the donors. In view of the same, the trial Court ought to have convicted the respondent and hence, he prayed for setting aside the judgment of acquittal.

8.Per contra, Mr.Rajarathinam, the learned counsel appearing for the respondent submitted that in the FIR, it is clearly mentioned that the trust was started at Cuttack on 05.10.2001 by Smt.Jashawini Patnaik, Dr.Manoj Kumar Bhuyan and Dr.Smt.Soudamani Das as trustees and by way of resolution of the trust, the respondent's father was authorized to operate the account, for the reason that the Managing Trustees was residing in a village and it was difficult to operate the trust account. The respondent's father was an Auditor of the Bank which has been clearly stated by PW28. Hence, for the sake of convenience he was made to operate the account. Further, majority of witnesses, have clearly stated that three or four persons from Orissa had come to Salem seeking donations for the trust for rehabilitation of the persons who were recently hit by a devastating cyclonic storm which caused great damages to the public. PW62, the Investigating Officer, admitted about the cyclonic devastation in the year 2001 in Orissa State. Further at that point of time there were several officers from Orissa who were working in Salem who showed interest in rehabilitation and to restructure the devastated persons.

9.He further submitted that none of the witnesses have stated that there was any demand or compulsion for the donations. It is an admitted case that the trust and its functions were transparent. As per Ex.P207, the Deed of Charitable Trust as well as Ex.P208, the receipt and demand of the trust accounts would show that the amount withdrawn in cash, was spent only for the cause and aim of the trust and no individual had benefited out of the trust funds. It is also admitted that the house of the respondent was searched and no incriminating materials were seized and no case of disproportionate assets was initiated. Further, it is admitted that the respondent is only an intermediate officer. The files had been initiated and put by the Assessing Officer, namely, the Income Tax Officer, who have interface with the Assessees and Auditors. No Income Officer has stated anything about the respondent exerting any pressure on them to collect donations. Thereafter, the files were put up along with the documents to the respondent, who on perusal of the files and documents gives his recommendation and forwards the files to the Commissioner. The Commissioner is the authority to give exemption to the assessees under Section 80G of the Income Tax Act. Likewise, in the case of refund of amount, the Assessment Officers are the authorities to order refund. Only in cases where the amounts are of higher value for approval, it is put up to the respondent for approval.

10.He further submitted that the respondent, who was working in a sensitive position, had ordered surveillance against the persons evading the tax and the Assistant Commissioner, have conducted surveillance and initiated action against the tax evaders. The respondent, being a strict officer, had collected huge sums, which were evaded, as could be seen from the statement of witnesses. The Income Tax officials, confirms the same. It is also admitted fact that the communication with regard to exemptions, refund, surveillance, Block Assessment are between the Assessing Officer, the respondent and the Commissioner, which are all confidential, nobody has access to the same.

11.None of the witnesses have stated anything about any promise or favour given to them by the respondent and thereby they made any donation to the trust. The donors have either stated that it was on the instructions of the Auditors or on appeal made by two or three persons who had come from Orissa seeking donations, the donations were made. None have stated that the donations were made at the instance of the respondent or on his compulsion. The functioning of the trust was transparent, its accounts were audited and submitted to the Income Tax Department which is not in dispute. Further PW27 to PW30 as well as PW58, had clearly stated it was Dr.Manoj Kumar Bhuyan, who is the Managing Trustee of the trust. PW28 the Branch Manager of CCCB Limited, Cuttack, stated that he was present with CBI Inspector, who enquired Dr.Manoj Kumar Bhuyan, the Managing Trustee and visited the village, where the trust was carrying on its activities, found the trust was not a name sake trust and it was functioning and carrying out its public charity for the benefit of poor and needy.

12.PW59 and PW60, the Inspectors of CBI stated about visiting Cuttack, examining the CCCB Limited, Bank officials, perusing the documents of the bank and the trust. It is admitted by PW59 and PW60 that none of the trustees were shown as accused nor as witnesses in this case. The majority of the donors have not supported the case of the prosecution. The witnesses namely PW32, PW41 and PW52 are the only witnesses in this case, who have stated about donations being made at the instance of the respondent. PW32, who is running Hemalatha Memorial Trust stated in chief-examination that the respondent requested for donations to the trust, on the same breathe stated that various donations were made by him to many other persons and he was in the habit of asking donations. Further, PW32 admitted that his Income Tax matters were dealt by one Thirunavukarasu, Auditor. Further submitted that his Pioneer Match Industries was under surveillance and raid was conducted by the officials of the Income Tax Department and he had reasons to grind against the officials. Further Hemalatha Memorial Trust, was registered with the Income Tax Office, Dharmapuri which was not under the control of the respondent. The evidence of this witness does not inspire confidence.

13.PW41 partner of SSP Lorry Transport stated that at the request of his Auditor/PW42, Sekar, he gave donations and admitted that he does not know the respondent's period of service and his tenure in Salem Office. Further, he has clearly stated that he neither met the respondent nor spoken to him even over phone. PW52, the Managing Director of A.P Export Private Limited stated about the surveillance conducted against his business establishments and it was found that he evaded payment of Income Tax. He admitted evasion and agreed to pay Rs.1.30 crore towards Income Tax. He also admitted two or three persons from Orissa had come to his Office, requested for donations and they were referred by Managing Director of Barnes Standard Company which was functioning in Salem. This witness does not whisper anything with regard to demand or pressure exerted by the respondent. The Investigating Officer admitted that he had not collected any phone details and materials. In view of the same, no credence is to be given to the telephonic request.

14.Further Ex.P1 is the Sanctioning Order which has been authenticated by PW1. In the Sanction Order there are factual errors. PW1 being an authenticating officer is unable to give satisfactory explanation for the same. It is admitted that the respondent is only an intermediate officer and he has no occasion to meet donors personally. The bank officials, PW25 to PW30 and PW58 and the CBI officials, PW59 and PW60 had clearly stated about the existence of the trust. PW62, the Investigating Officer admitted that he had not visited Cuttack. There are sufficient documents to prove that the trust was carrying its charitable works. Hence, the evidence of PW32, PW41, PW52 being highly doubtful, cannot be relied upon.

15.The learned counsel further submitted that out of 22 donors, 16 donors have not supported the case of the prosecution, the remaining 6 donors had stated clearly that the donations was voluntarily given by them and the respondent had no direct or indirect contact with them. The respondent had no interface with the Assessees and Auditors. Hence, he had no connection of official functions with them. The three witnesses PW32, PW42 and PW52 are unreliable. PW26, the Commissioner of Income Tax has stated that the Income Tax department communication are highly confidential and secretive and granting exemption under Section 80G is the discretion of the Commissioner of the Income Tax.

16.The learned counsel for the respondent further submitted that the prosecution under Section 20 of the Prevention of Corruption Act, 1988, has been dislodged by way of preponderance of probability by cross examination of witnesses and on the materials of the case. The trial Court taking all these factors into consideration by a well reasoned judgment, acquitted the respondent and prayed for dismissal of the appeal.

17.In support of his contention, the learned counsel for the respondent relied upon the following citations:-

> "1.M.Narayanan Nambiar Versus State of Kerala reported in AIR 1963 SC 1116.
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> 2.State of Maharashtra Versus Wasudeo Ramchandra Kaikalwar reported in (1981) 3 SCC 199.
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> 3.State of Tamil Nadu Versus S.Krishnamurthy reported in (2002) 9 SCC 530.
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> 4.A.Shankar Versus State of Karnataka reported in (2011) 6 SCC 279."

18.This Court considered the rival submissions and perused the materials available on record.

19.The respondent, is not connected with UPUS trust. Only for the reason that the Managing trustees was residing in village, the respondent's father who is Auditor of the CCCB Limited (Bank) was authorized to operate the trust account to facilitate the transaction. The amounts which have been properly accounted for the functioning of the trust is not in dispute. The house of the respondent was searched and no incriminating materials found. Further no case under disproportionate assets have been initiated against the respondent. From Exs.P84 & P207, it is seen that the respondent's father is not a trustee. In Ex.P82, the reason for why the father of the respondent was authorized to operate the bank account of the trust is recorded. The Investigating officer failed to show that there was any demand made by the respondent for donation to the trust. There is no material to connect the respondent with the trust and that he was benefited from the trust amount.

20.The prevalent of practise in the offices seeking donations for natural calamities and for social causes is in vogue. In view of the same and following the principles of the Hon'ble Apex Court in interference with the order of acquittal, it would be gain said to extract the relevant portion of the judgment in the case of A.Shankar Versus State of Karnataka reported in (2011) 6 SCC 279:-

"26.It is settled legal proposition that in exceptional circumstances the appellate court under compelling circumstances should reverse the judgment of acquittal of the court below if the findings so recorded by the court below are found to be perverse i.e. the conclusions of the court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case. While dealing so, the appellate court must bear in mind the presumption of innocence of the accused and further that acquittal by the court below bolsters the presumption of his innocence. (Vide Abrar v. State of U.P. [(2011) 2 SCC 750 : (2011) 2 SCC (Cri) 702] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488] .)"

21.PW62, the Investigating Officer admitted that he had not visited Cuttack. PW59 and PW60, the Inspector of Police, CBI who visited Cuttack, enquired the bank officials of CCCB Limited, collected documents and particulars of the trust from the Bank. PW28 stated CBI officials made enquiry with Dr.Manoj Kumar Bhuyan Managing Trustee. PW28 accompanied CBI officials to village where the trust was functioning and got satisfied with the activities of the trust. Ex.P208 are the receipts and payment of the trust. The trust was actively pursuing its aim. Admittedly, none of the trustees were either shown as accused or examined as witness in this case. Except for these witnesses mentioned above none of the Assessees and Auditors have stated anything against the respondent. There is evidence to show that people from Orissa had come to Salem made request for donation. PW62 admitted that during the relevant period cyclonic storm devastated in Orissa. There have been eight officials in All India Services who served in Salem during the relevant period. One J.B.Patnaik was holding a Senior position in M/s.Burn Standard Company and was serving for a long time in Salem, his wife Smt.Jashaswini Patnaik, is one of the member of the trustees, who have coordinated seeking of donations for the trust. Thus, it is a fact that there was cyclonic devastation in Orissa and several officers hailing from Orissa at that point of time were serving in Salem. It is natural that relief, rescue and restructuring work, was carried out by the trust and donations were mobilized, it was a concerted effort. The witnesses admitted that some persons from Orissa had come and made request for donations. On the facts of the case, it cannot be said that the respondent abused his position and transacted with persons having connection with his official functions.

22.It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence can rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to the burden placed on the prosecution to prove the case beyond a reasonable doubt. The burden resting upon the accused is not so onerous, the respondent discharged the same by proof of balance of probabilities.

23.Following the principles of the Hon'ble Apex Court in a case of appeal against acquittal, this Court finds no reason to interfere with the judgment of acquittal of the trial Court. In the result, this Court confirms the Judgment of acquittal rendered by the trial Court. The appeal is dismissed, accordingly.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge for CBI Cases,
Coimbatore.

2.The Additional Superintendent of Police,
C.B.I SPE/CBE/ACB/Chennai.

3.The Public Prosecutor,
High Court, Madras.

Crl.A.No.398 of 2009

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